TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 194.

THE UNITED STATES *EX RELATIONE* WILLIS C. WEST,
PLAINTIFF IN ERROR,

vs.

ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 31, 1906.

(20,074.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 5, 1906.

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1 In the Court of Appeals of the District of Columbia.

No. 1555.

UNITED STATES *ex Relatione* WILLIS C. WEST, Appellant,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior.

Supreme Court of the District of Columbia.

No. 44853. At Law.

THE UNITED STATES on Relation of WILLIS C. WEST, Relator,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

Designation of Additional Parts of Record.

Filed April 19, 1905.

In the Supreme Court of the District of Columbia.

No. 44853.

UNITED STATES *ex Rel.* WEST
vs.
ETHAN A. HITCHCOCK.

To the clerk of the supreme court:

In preparing the transcript for the Court of Appeals in this case please include therein the following:

1. Demurrer to petition, filed August 19, 1901.
2. Order sustaining demurrer, etc., filed August 29, 1901.
3. Order vacating judgment, overruling demurrer, etc., filed May 23, 1902.

MORGAN H. BEACH,
Attorney for Defendant.

2 *Return to Rule to Show Cause.*

Filed August 19, 1901.

In the Supreme Court of the District of Columbia.

Law. No. 44853.

THE UNITED STATES *ex Rel.* WILLIS C. WEST
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior.

Now comes the said defendant, Ethan A. Hitchcock, Secretary of the Interior, and for a return to the rule to show cause heretofore on the 5th day of August, 1901, issued in the above entitled cause, why a writ of mandamus should not issue as prayed therein, respectfully shows unto the court that the said petitioner hath not in and by his said petition, set forth facts sufficient to require this respondent to do and perform the acts in said petition prayed, for the following reasons:

First. Because the subject-matter set forth in said petition is purely of executive cognizance resting in the judgment and discretion of this respondent as Secretary of the Interior in the ordinary discharge of his official duties.

Second. Because the aforesaid subject-matter is one in which judgment and discretion are to be exercised.

Third. Because the said petitioner has a full, complete and adequate remedy for the enforcement of his said rights without resorting to the extraordinary proceedings in mandamus.

Fourth. Because the petition does not state facts sufficient to constitute a cause of action.

Fifth. Because the petition is bad in substance.

Wherefore, this respondent prays the aforesaid rule may be discharged and the said petition be dismissed at the cost of the petitioner.

ETHAN A. HITCHCOCK,
Secretary of the Interior.

ASHLEY M. GOULD,
Attorney for Def'd't.

3 Supreme Court of the District of Columbia.

THURSDAY, *August 29th*, 1901.

Session resumed pursuant to adjournment, Hon. Job Barnard, justice, presiding.

No. 44853. At Law.

THE UNITED STATES *ex Rel.* WILLIS C. WEST, Relator,
v.
ETHAN A. HITCHCOCK, Secretary of the Interior, Respondent.

This cause coming on to be heard on the petition herein filed, the rule to show cause, and the return to said rule by the Secretary of the Interior, and the same having been argued by counsel, and the court being fully advised doth this 29th day of August, 1901; adjudged and ordered that the aforesaid rule to show cause be, and the same is hereby discharged, and that the petition be dismissed, at the costs of the relator.

From the above, the relator in open court notes an appeal to the Court of Appeals of the District of Columbia, and the bond for costs is fixed in the sum of two hundred ($200.) dollars.

Supreme Court of the District of Columbia.

FRIDAY, *May* 23, 1902.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

At Law. No. 44853.

THE UNITED STATES *ex Rel.* WILLIS C. WEST, Relator,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior, Respondent.

Now comes here Mr. Robeson and presents the mandate of the Court of Appeals, and it appearing from said mandate that the judgment appealed from having been reversed, with costs, it is considered that the demurrer to the petition herein filed be, and hereby is, overruled, with leave to the respondent to plead to the petition within twenty days, as he may be advised, and further it is considered that the relator recover against the respondent thirty-three dollars and thirty cents ($33.30) for his costs of appeal as adjudged, and have execution thereof.

4 *Petition for Mandamus.*

Filed August 5, 1901.

The Supreme Court of the District of Columbia.

At Law. No. 44853.

THE UNITED STATES on Relation of WILLIS C. WEST
vs.
ETHAN A. HITCHCOCK, the Secretary of the Interior.

To the supreme court of the District of Columbia:

The petition of Willis C. West showeth:—

1. That he is a white citizen of the United States, over the age of twenty-one years, and resident on the Wichita reservation in the Territory of Oklahoma;

2. That long before the year 1891 he was married to a woman who was by blood a member of the tribe of Wichita Indians, then located on lands belonging to themselves and their affiliated bands in the Indian Territory, but now situate in the Territory of Oklahoma; that by reason of the petitioner's marriage to the said Indian woman he was, in accordance with the custom, usage and laws of said tribe of Wichita Indians, by that act adopted into, and thereby became a member of said tribe, and has been since the date of his said marriage, in all particulars and respects, treated and recognized as a member thereof by both the said tribe of Indians, and the authorities of the United States having the jurisdiction and control of Indian affairs;

3. That heretofore, to wit, on the fourth day of June, 1891, an agreement was made and entered into by and between the said Wichita tribe of Indians and its affiliated bands upon the one part, and the United States upon the other part, by which agreement it was provided that there should be selected by and allotted to each member of the said Wichita tribe of Indians and its affiliated bands, native and adopted, a tract of one hundred and sixty acres of land, said allotments not to exceed one thousand and sixty in number.

More particular reference will be hereafter made to the said agreement as effectuated by an act of Congress of March 2, 1895;

4. That at the time of the negotiation of the said agreement between the said Indians and the United States, and in confirmation of petitioner's previous adoption into the said tribe of Wichita Indians, and in the presence of the commissioners of the United States, who negotiated the said agreement, and in the presence of an assembled council of the said Wichita tribe of Indians and its affiliated bands, petitioner was formally and solemnly adopted and
5 recognized as a member of the said Wichita tribe; and that he then assisted in the negotiation of the said agreement as a member of the said tribe of Wichita Indians, and after this formal adoption and recognition, signed the said agreement for and on be-

half of, and as a member of the said tribe of Wichita Indians, as will appear from Executive Document Fourteen, Fifteen-second Congress, first session, his signature thereto being number one hundred and one; and in further recognition of petitioner's membership in said tribe, and of his rights, privileges and immunities as a member thereof, he was paid a per capita share of the tribal funds at the same time and in the same manner as all other members of said tribe were paid, in March, 1894, (which is the first roll of per capita payments ever made to said Indians to be found on file in the Indian Bureau) his name appearing on the roll as number three hundred and sixty-six, and again in 1895, his name appearing on the roll as number three hundred and ninety-one, and his name also appearing on the census roll of 1895, which census roll was prepared by the agent for the said tribe under the orders and directions of the defendant, The Secretary of the Interior, petitioner's name appearing thereon as number three hundred and sixty-nine.

Since the date of petitioner's said original adoption and entrance into the tribe down to the present day, petitioner has been continuously recognized by the Indians of the said Wichita tribe and its affiliated bands, as a *bona fide* member of said tribe, entitled to all the privileges, rights and immunities of any of the members thereof; and on May 21, 1901, at a regular and formal council of the Indians held on their reservation in the presence of their United States Indian agent, he was formally, by vote of said council, again confirmed and recognized as an adopted member of said tribe, both by general council of the individual members of the tribe and by the separate council of the chiefs thereof, having in view the preservation of the petitioner's rights as hereinafter alleged;

5. That petitioner by reason of his said adoption and the continuous and continuing recognition thereof, acquired all the rights, privileges, and immunities of whatever character or description that belong or pertain to the native members of the tribe, and was, and is an adopted member of the tribe in the legal and fullest signification of the term;

6. The defendant, Ethan A. Hitchcock, is the Secretary of the Interior of the United States.

7. That the said agreement between the Wichita tribe of Indians and its affiliated bands on the one part, and the United States on the other part, to which reference has been hereinbefore made, was heretofore, to wit, on the second day of March, 1895, ratified and carried into effect by an act of Congress entitled "An act making appropriations for current and contingent expenses of the Indian Department, and fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June 30, 18[illegible]5, and for other purposes,"
6 the same being chapter one hundred and eighty-eight of the laws of the Fifty-third Congress, third session.

8. By the agreement ratified by the said act of Congress the said Wichita and affiliated bands of Indians conveyed to the United States their lands situate in the Indian Territory, in consideration of which cession the United States agreed, and it is so provided in said act, that there should be "allotted to each and every member of the said

Wichita and affiliated bands of Indians in the Indian Territory, native and adopted, one hundred and sixty acres of land."

The said agreement and the said act required the allottees to take at least one-half the area of their allotments in grazing lands; and gave the right of personal selection to every member of the said Wichitas and affiliated bands over the age of eighteen years; limited the selection of lands to those which were not set apart for military, agency, school, schoolfarms, religious, townsite, or other public uses, or were in section- sixteen, thirty-six, thirteen, and thirty-three of every township, which were reserved for school purposes; vested in the Secretary of the Interior the power and duty of approving the allotments made; and provided for the sale of the lands remaining after the making of allotments under the act, and the payment of the sum realized therefrom to the said Indian bands under certain conditions, especially providing that the sum thus to be paid should be "subject to a reduction for each allotment of land that may be taken in excess of one thousand and sixty," which said number represented the number of the members of the said Wichita tribe of Indians and its affiliated bands, native and adopted, entitled to such allotments, as previously ascertained by said commissioners negotiating the said agreement, which is by the said act of Congress carried into effect." (28 Stat. L. 876, 895, 896 and 897.)

9. The inclusion of petitioner as a member of said tribe, and of all the native and adopted members of said tribe of Wichita Indians and its affiliated bands, did not cause the allotments to exceed the number of one thousand and sixty, and by reason of numerous deaths of members of said tribe and its affiliated bands, since the execution of the said agreement and the enactment of the said law, the allotments to be made to those entitled at this time, including members native and adopted, will not exceed, but will fall below one thousand and sixty in number.

9½. In accordance with the provisions of the said agreement and of the said act of Congress of March 2, 1895, ratifying the same, and in compliance with the rules and regulations made by the Secretary of the Interior, petitioner has heretofore selected a certain tract of one hundred and sixty acres of the said lands of the Wichita tribe and its affiliated bands of Indians, not included within lands reserved for military, agency, school, school-farms, religious, townsite, or other public uses, or in sections sixteen, thirty-three, thirteen or thirty-six, and being a tract upon which he has made valuable and permanent improvements, and which is now used and oc-
7 cupied by petitioner, and which complies in all other particulars with the provisions, restrictions and requirements of the said agreements and the said ratifying act.

10. It is further provided by the said act of March 2, 1895, "that wherever in said tract of country any one of said Indians has made improvements and now uses and occupies the land embracing such improvements, such Indian shall have the undisputed right to make his or her selection to conform to legal sub-divisions, however, so as to include such improvements without reference to the classification of land hereinbefore recited."

11. In accordance with the further provisions of the said agreement and the said ratifying act, and in compliance with the rules and regulations made and provided by the Secretary of the Interior, petitioner has regularly, duly and formally applied for the allotment to him of the said one hundred and sixty acres of land so selected and located by him, which are described as follows:

The south east quarter (¼) of section number fourteen (14) of township number ten (10) north of range number eight (8) west.

12. That under and by virtue of the said act of Congress of March 2, 1895, and of previous statutes, and of his official position as Secretary of the Interior, there was devolved upon the said Ethan A. Hitchcock, Secretary of the Interior, the plain ministerial unqualified; absolute and peremptory duty of approving the selection and directing the allotment to the petitioner of the lands hereinbefore described.

13. That notwithstanding petitioner's rights by reason of his said adoption into the tribe, and notwithstanding his selection and taking of the said lands, and his regular and formal application for the allotment thereof, the said Ethan A. Hitchcock, Secretary of the Interior, has wrongfully and in violation of law, and in disregard of the said rights of petitioner, neglected, failed and refused to allot to your petitioner the lands included within his said selection, or any other lands, and that the said Ethan A. Hitchcock, Secretary of the Interior, himself and by those subordinate in authority to him, still neglects, fails and refuses to recognize the rights of petitioner, which are still existent, and to allot to him the lands included within his selection, or any other lands out of the reservation of the said Wichita tribe of Indians and its affiliated bands.

14. By the said act of Congress of March 2, 1895, it was further provided that whenever any of the said lands of the Wichita Indians, acquired by the agreement which is thereby ratified, should be by operation of law or by proclamation of the President, opened to settlement, they should be disposed of under the general provisions of the homestead and town-site laws of the United States; and that said lands should be opened to settlement within one year after the making of the allotments therein provided for.

By the act of Congress of March 3, 1901, being chapter 46 of the Laws of the 56th Congress, second session, entitled "An act to
8 supplement existing laws relating to the disposal of lands and so forth," it was provided that said lands acquired from the Wichita and affiliated bands of Indians should be opened to settlement by proclamation of the President. In accordance with the terms of the said act the President of the United States by his formal proclamation declared the said lands open to settlement on August sixth, 1901.

In accordance with the original act modifying the said agreement between the United States and the said Indians, the Secretary of the Interior has caused allotments to be made to the various members of the Wichita and affiliated bands, except the petitioner and certain other members of the said bands, and said schedules of allotment, omitting the petitioner, have been finally approved and the work of

allotment finally closed, and said petitioner finally excluded from the benefit of the provisions of the said act by the said wrongful and unlawful failure, neglect and refusal of the said Secretary of the Interior to approve petitioner's selection and taking, and to allot to him the lands in question.

15. Under the said proclamation of the President of the United States the said lands of the Wichita and affiliated bands of Indians will be, on August sixth, 1901, at nine o'clock, a. m., opened to settlement under the homestead laws of the United States and the rules prescribed by the said Secretary of the Interior; and in view of the valuable improvements erected by the petitioner upon the said lands taken and selected by him, as hereinbefore shown, and the value of its location, parties entitled to make entry under such homestead laws and the rules of the Secretary of the Interior, will immediately make homestead entry upon the said lands selected and taken by petitioner, and will thereby deprive petitioner of and preclude him from the enjoyment, occupation, use and possession of the said lands to which he is under the law entitled, and will thereby occasion to him great and irreparable injury.

16. That the petitioner has no other adequate and specific remedy at law for the infringement upon or the destruction of the rights herein alleged, save the extraordinary process of this honorable court, without the aid of which the petitioner will be forever deprived of his rights hereinbefore shown, which are now existent, and which it is the present duty of the Secretary of the Interior to preserve and effectuate by the approval of the said selection and taking and by the allotment to the petitioner of the lands so selected and taken by him.

Petitioner therefore prays that a writ of mandamus issue out of this honorable court, directed to the said Ethan A. Hitchcock, Secretary of the Interior, commanding him to approve the selection and taking of the said lands, hereinbefore described to your petitioner, and to allot the same to petitioner; or that an alternative writ of mandamus, or an order to show cause why a peremptory writ should not be granted, issue, directed to the said Ethan A. Hitchcock, Secretary of the Interior, and returnable at such time as shall command itself to the discretion of this honorable court, and that in
9 the mean time the said Secretary of the Interior be directed to withdraw the said lands from entry and settlement pending the final action of the court herein.

And your petitioner prays that he may have such other and further relief as to this honorable court will appear right and proper, and to that end that all necessary orders and decrees be entered.

Your petitioner further represents that this application is not made for the purpose of delay, but solely for the purpose of protecting the vested rights of your petitioner against the wrongful and unlawful act or omission of the defendant The Secretary of the Interior.

WM. H. ROBESON,
W. C. SHELLEY,
W. S. FIELDS,
Att'ys for Pet'r.

DISTRICT OF COLUMBIA, *ss:*

I, Walter S. Fields, do solemnly swear that I am the agent and attorney in fact of the petitioner in the foregoing petition; that the petitioner is a non resident of the District of Columbia, and is absent from this jurisdiction; that I have read the foregoing petition by me subscribed as the agent and attorney of the petitioner Willis C. West and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that those stated upon information and belief, I believe to be true.

WALTER S. FIELDS.

Sworn to and subscribed before me this August 5, 1901.

GEO. F. GRAHAM,
Notary Public.

[SEAL.]

Rule to Show Cause.

Filed August 5, 1901.

In the Supreme Court of the District of Columbia.

At Law. No. 44853.

THE UNITED STATES *ex Rel.* WILLIS C. WEST
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior.

It is this fifth day of August, 1901, ordered that Ethan A. Hitchcock, Secretary of the Interior, show cause on or before the 13th day of August, 1901, why the writ of mandamus should not issue as prayed in the petition filed in this court provided a copy of this order be served on the said The Secretary of the Interior on or before the 7th day of August, 1901.

HARRY M. CLABAUGH, *Justice.*

10 *Marshal's Return.*

Served copy of within order and copy of the petition in this cause on Thomas Ryan acting Secretary of the Interior August 5, 1901.

AULICK PALMER, *Marshal.*
S.

Answer of Defendant Hitchcock.

Filed July 11, 1902.

In the Supreme Court of the District of Columbia.

At Law. No. 44853.

THE UNITED STATES on the Relation of WILLIS C. WEST
v.
ETHAN A. HITCHCOCK, Secretary of the Interior.

Comes now the above named Ethan A. Hitchcock, as Secretary of the Interior, and in answer to the petition of the relator filed herein, alleges:

That by sections 441 and 463 of the Revised Statutes this defendant, as Secretary of the Interior, has at all times during his incumbency of that office been charged with the supervision and direction of all public business relating to the Indians, the management of Indian affairs and the management of matters arising out of Indian relations; that by the agreement between the United States and the Wichita and affiliated bands of Indians in Oklahoma Territory, ratified by the act of Congress approved March 2, 1895, (28 Stat., 876, 894), all allotments in severalty to the members of such Wichita and affiliated bands of Indians of land relinquished to the United States by such agreement were expressly subjected to the approval of the Secretary of the Interior; that the lands applied for by relator as an allotment in severalty to him are a part of the lands relinquished to the United States by the agreement so ratified; that the application of the relator for such allotment in severalty was made and is now insisted upon by him under the agreement so ratified, and not otherwise; that by the terms of the agreement so ratified the allotments in severalty to be made thereunder were to be and are restricted to the members of said Wichita and affiliated bands of Indians, native and adopted; that the application of the relator for an allotment in severalty to him came before this defendant, as Secretary of the Interior, for examination, consideration and approval or disapproval, in the due and regular course of the public business relating to the Indians, the management of Indians affairs
11 and the management of matters arising out of Indian relations, and in the due and regular course of administering and executing that portion of the agreement so ratified which subjects to the approval of the Secretary of the Interior all allotments in severalty sought to be taken thereunder; that when the application of relator for an allotment to him came before this defendant as Secretary of the Interior, this defendant had no knowledge respecting the relator, or his relation to the Wichita and affiliated bands of Indians, or any member thereof, and did not know whether or not the relator was by nativity or adoption a member of said Wichita and affiliated bands of Indians, and this defendant has not at any time

since then acquired any knowledge respecting the relator or his relation to the Wichita and affiliated bands of Indians, or any member thereof, or his claimed membership thereof, excepting such knowledge thereof as was obtained in the course of the defendant's official examination and consideration of the relator's application for an allotment, with a view to the approval or disapproval thereof; that for the purpose of enabling him to properly discharge his duty in the premises and to give due respect to the rights, if any, of the relator, the Wichita and affiliated bands of Indians, or the United States, and especially for the purpose of enabling him to correctly determine whether the relator was entitled under the agreement so ratified to an allotment in severalty to be taken from the lands so relinquished to the United States, this defendant, as Secretary of the Interior, examined and considered the said application of the relator and all evidence and proofs presented by or in behalf of the relator in support of such application, including each and all of the matters set forth in the petition herein in support of such application, and also such other evidence and proofs bearing thereon as was embodied in the public records and files of the Indian Bureau, and in the Department of the Interior, and upon full consideration of the said application of the relator and of all such evidence and proofs, this defendant, as Secretary of the Interior, did, on the 3rd day of July, 1901, reach and announce a conclusion and decision that the relator was not, by nativity or adoption, a member of the Wichita and affiliated bands of Indians, and for that reason was not entitled to an allotment under the agreement so ratified, and thereupon this defendant, as Secretary of the Interior, denied the application of the relator for said allotment.

Having fully answered the petition of the relator filed herein, this defendant prays that the rule to show cause heretofore issued in this case be discharged, and the petition aforesaid be dismissed with costs to the defendant.

E. A. HITCHCOCK,
Secretary of the Interior.

ASHLEY M. GOULD,
WILLIS VAN DEVANTER,
Attorneys for Defendant.

12 UNITED STATES OF AMERICA, *District of Columbia, ss:*

Ethan A. Hitchcock, being first duly sworn, upon his oath deposes and says that he is the Secretary of the Interior, and as such Secretary is the defendant named in the foregoing answer; that he has read said answer and the several matters of fact set forth therein are true as he verily believes.

E. A. HITCHCOCK.

Subscribed in my presence and sworn to before me this ninth day of July, 1902.

WM. H. DE LACY,
Notary Public.

[NOTARIAL SEAL.]

Motion for Peremptory Mandamus.

Filed September 30, 1902.

In the Supreme Court of the District of Columbia.

No. 44853.

THE UNITED STATES on the Relation of WILLIS C. WEST
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior.

Comes the relator, Willis C. West, by attorney, and moves the court for the issuance of a peremptory writ of mandamus, as prayed in the petition.

WILLIS C. WEST,
By W. H. ROBESON, *Att'y.*

WM. H. ROBESON,
WM. C. SHERLEY,
WALTER S. FIELD,
Attorneys for Relator.
CLAYTON E. EMIG,
Of Counsel.

In support of this motion it will be argued—

First. That the allegations of the return, that the defendant, as the Secretary of the Interior, did "reach and announce a conclusion and decision that the relator, Willis C. West, was not by nativity or adoption a member of the Wichita and affiliated bands of Indians," is immaterial and insufficient.

Second. That the relator was adjudged to be an adopted member of the Wichita and affiliated bands of Indians by a court of competent jurisdiction; and that he was such at the time of the making of his said selection, and at the time of the making of his application to defendant, as the Secretary of the Interior, for his approval of said selection.

13 Third. That the return to the petition is insufficient in that it does not state the facts upon which the defendant, as the Secretary of the Interior, refused the approval of the relator's selection.

Supreme Court of the District of Columbia.

WEDNESDAY, *February* 10, 1904.

Session resumed pursuant to adjournment, Mr. Justice Barnard, presiding.

* * * * * * *

At Law. No. 44853.

THE UNITED STATES *ex Rel.* WILLIS C. WEST, Relator,
v.
ETHAN A. HITCHCOCK, Secretary of the Interior, Resp't.

Upon hearing the motion of the relator for a peremptory writ of mandamus, it is considered that said motion be, and hereby is, overruled, with leave to said relator to plead within ten days.

Demurrer to Answer.

Filed February 10, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 44853.

THE UNITED STATES on the Relation of WILLIS C. WEST
v.
ETHAN A. HITCHCOCK, Secretary of the Interior.

The petitioner says that the answer of the defendant heretofore filed in this cause is bad in substance.

WM. H. ROBESON.
W. C. SHELLEY.
W. S. FIELD.

Marginal Note.

Matters of law intended to be argued are that—

I. The defendant in his answer does not state any facts which show that the subject matter of his decision of July 3, 1901, denying an allotment to petitioner, was one of exclusive executive cognizance or vested solely in his judgment and discretion.

II. The defendant in his answer does not deny any of the
14 allegations of the petition and does not state that in hearing and determining the application of petitioner for allotment of land he had before him any fact or considered any question bearing upon or relating to said application other than those contained in the allegations of the petition.

III. The defendant in his answer does not state facts which constitute a sufficient answer to the rule to show cause heretofore issued in this case.

Supreme Court of the District of Columbia.

FRIDAY, *March* 18, 1904.

Session resumed pusuant to adjournment, Mr. Justice Barnard, presiding.

* * * * * * *

At Law. No. 44853.

THE UNITED STATES *ex Rel.* WILLIS C. WEST, Petitioner,
v.
ETHAN A. HITCHCOCK, Secretary of the Interior, Respondent.

Upon hearing the demurrer to the answer of the respondent, it is considered that said demurrer be, and hereby is, overruled, with leave to the relator to plead within ten days.

Relator's Pleas.

Filed March 24, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 44853.

THE UNITED STATES *ex Rel.* WILLIS C. WEST
vs.
ETHAN A. HITCHCOCK, the Secretary of the Interior.

1. The relator says that the defendant, as Secretary of the Interior, did not, by the decision alleged in the answer to have been made by him on July 3, 1901, decide that the relator was not by nativity or adoption a member of the Wichita or affiliated band of Indians, and for that reason deny him the said allotment.

2. The relator further says that the defendant, when he made the decision alleged in the answer to have been made by him on July 3, 1901, did not have before him or consider any evidence tending to show that the relator was not entitled to said allotment.

3. The relator further says that the defendant, when he made the decision alleged in the answer to have been made by him on
15 July 3, 1901, did not have before him or consider any evidence tending to establish any facts other than those set out in the relator's petition.

4. The relator further says that the defendant, when he made the decision alleged in the answer to have been made by him on July 3, 1901, did not have before him or consider any evidence tending to establish any facts which permitted him to exercise the discretion vested in him by law as Secretary of the Interior.

WM. C. SHELLEY,
WM. H. ROBESON,
SAMUEL A. PUTNAM,
W. S. FIELDS,
Attorneys for Relator.

Demurrer to Petitioner's Pleas.

Filed April 19, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 44853.

THE UNITED STATES *ex Rel.* WILLIS C. WEST
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior.

The defendant says that the petitioner's pleas, and each and every one thereof are bad in substance.

MORGAN H. BEACH,
Attorney for Defendant.

NOTE.—Among the matters of law intended to be argued in support of the foregoing demurrer are the following:

1. That the answer of the defendant is conclusive as to matters of fact in a mandamus proceeding.
2. That the matters alleged in each of said pleas are immaterial.

Supreme Court of the District of Columbia.

FRIDAY, *May* 27, 1904.

Session resumed pursuant to adjournment Mr. Justice Barnard, presiding.

* * * * * * *

At Law. No. 44853.

THE UNITED STATES *ex Rel.* WILLIS C. WEST, Petitioner,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior, Resp't.

Upon hearing the demurrer of the respondent to the four pleas of petitioner to respondent's answer, it is considered that the
16 demurrer to the first plea be, and hereby is, overruled, and that said demurrer to the second, third, and fourth pleas be, and hereby is, sustained.

Joinder in Issue to Petitioner's First Plea.

Filed June 24, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 44853.

THE UNITED STATES *ex Rel.* WILLIS C. WEST
v.
ETHAN A. HITCHCOCK, Secretary of the Interior.

The defendant joins issue on the petitioner's first plea.

MORGAN H. BEACH,
Attorney for Defendant.

Supreme Court of the District of Columbia.

WEDNESDAY, *April* 12, 1905.

Session resumed pursuant to adjournment, Mr. Justice Barnard, presiding.

* * * * * * *

At Law. No. 44853.

THE UNITED STATES *ex Relatione* WILLIS C. WEST, Relator,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior, Defendant.

Now come the relator by his attorneys Messrs. Robeson, Shelley, Field and Putnam, and the defendant by his attorneys, Messrs. Beach and Adkins and Barclay, and neither party having required in writing a trial by jury, this cause is tried by the court; whereupon, after hearing the evidence and arguments of counsel the court finds and determines as follows: 1. On all the evidence the court finds for the defendant, on the grounds that the evidence is insufficient in law to support a finding for the relator. 2. The court finds that the defendant did reach and announce a conclusion and decision that the relator was not, by nativity or adoption, a member of the Wichita and affiliated bands of Indians, and for that reason was not entitled to an allotment of land as prayed, and that thereupon the defendant did deny the application of the relator for such allotment. 3. The court finds that the defendant, as Secretary of the Interior, disapproved the application of the relator for membership by adop-
17 tion in the Wichita tribe or band of Indians. Thereupon counsel consent that judgment may be forthwith rendered: Therefore it is considered that the prayer of the relator for the writ of mandamus be and hereby is denied, the rule to show cause discharged, and the petition dismissed at the costs of the relator, and that the defendant have execution thereof.

The relator notes an appeal to the Court of Appeals, bond for costs thereon being fixed in the penalty of one hundred dollars.

Opinion of the Court.

Filed April 12, 1905.

In the Supreme Court of the District of Columbia.

No. 44853. Law.

THE UNITED STATES *ex Rel.* WILLIS C. WEST
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior.

The relator filed his petition in this court August 5, 1901, praying for a peremptory writ of mandamus against the defendant, to command him to approve the selection of 160 acres of land, with the improvements thereon, claimed by the petitioner as an allotment under the act of Congress of March 2nd, 1895, (28 Statutes at Large, page 876.)

The relator in his petition avers, to state it briefly, that he is entitled to all the rights of an Indian, belonging to the Wichita and affiliated bands of Indians, residing on the Wichita reservation in the Territory of Oklahoma; that he is a white man, but was regularly adopted as a member of said bands, he having married an Indian woman of the Wichita tribe, long before 1891.

On June 4th, 1891, the said tribe, and the United States, entered into an agreement by which the lands were to be ceded to the United States, and each member of said tribe, native and adopted, was to have allot-ed to him 160 acres of land; that he selected the land on which he had made improvements, but the defendant refused to approve of the same, and denied his right to an allotment.

The first pleading by the respondent was in the form of a demurrer to the petition; and on the case being heard in this court on the said demurrer, the mandamus was refused; and thereupon the case was appealed to the Court of Appeals, and the judgment of this court was reversed; and the proper method of pleading, by answer, instead of demurrer, was pointed out by the court in its opinion, which is reported in 19th Appeals, D. C. 333.

On the case being remanded to this court the defendant filed an answer to the petition in which he states, that he is charged with the general supervision and direction of all public business relating to the Indians and their affairs, under sections 441 and 463
18 of the Revised Statutes of the United States; and that by the said agreement between the United States and the Wichita and affiliated bands of Indians in Oklahoma Territory, ratified by the act of March 2nd, 1895, all allotments in severalty, to the members of said bands, were expressly subjected to the approval of the Secretary of the Interior; and that all such allotments were to be restricted to the members of said bands, native and adopted; that the

application of the relator for an allotment, came before the defendant, as Secretary of the Interior, for approval; and at that time the defendant had no knowledge respecting the relator, either as to his nativity or adoption, as a member of said bands, and has obtained no knowledge since on said subject excepting such as was obtained in the course of the defendant's official examination and consideration of the relator's application for an allotment, with the view to its approval or disapproval; and in order to properly discharge his duty in the premises, this defendant, as Secretary of the Interior, examined and considered the said application, and all evidence and proofs presented by, or in behalf of, the relator; and also such other evidence and proofs bearing thereon, as were embodied in the public records and files in the Indian Bureau, and in the Department of the Interior; and upon consideration of all such evidence and proof, the defendant did, as such Secretary, on July 3rd, 1901, reach and announce a conclusion and decision, that the relator was not, by nativity or adoption, a member of the Wichita and affiliated bands of Indians, and for that reason was not entitled to an allotment in the premises, and he therefore denied his application for the same.

To this answer the relator first filed a demurrer, which was overruled by the court; and thereupon he filed four pleas to said answer.

The defendant demurred to the said pleas, and the demurrer was overruled as to the first plea and sustained as to the others.

The first plea is as follows:

1. "The relator says that the defendant, as Secretary of the Interior, did not, by the decision alleged in the answer to have been made by him on July 3rd, 1901, decide that the relator was not, by nativity or adoption, a member of the Wichita or affiliated band of Indians, and for that reason deny him the said allotment."

On this plea issue was joined, and the case came on for trial before the court, without a jury, and at the trial certain documentary evidence was submitted, as follows:

Letters from the Commissioner of Indian Affairs to the Secretary of the Interior dated, February 18th, 1884; December 5th, 1893; June 7th, 1895; and April 18th, 1901. Also regulations of the Interior Department in Indian affairs, dated, September 22nd, 1884; December 28th, 1893; and March 1st, 1904. Also letters from the Secretary of the Interior to the Commissioner of Indian Affairs, dated September 22nd, 1884; December 13th, 1884; February 7th, 1898; September 8th, 1900; and July 3rd, 1901. Also let-
19 ters from the Commissioner of Indian Affairs as follows: Letter of February 27th, 1886, to Charles Hill, Indian agent; April 3rd, 1894, to Mrs. Jane Shirley; September 10th, 1901, to Davidson and Riddle.

To the admission of these documents as evidence in the case, the relator by his counsel objected; and mainly for the reason that the answer of the defendant did not put in issue the fact that the said relator was an adopted Indian in the said band; and therefore he contended, it was conclusively shown that in this case, the relator must be considered to be one of those entitled to an allotment under the said act of Congress, because the petition averred it, and the answer did not deny it.

This court held, in disposing of the demurrer to the answer, that the averments of the answer that the respondent on July 3rd, 1901, reached and announced a conclusion and decision, that the relator was not, by nativity or adoption, a member of the said band, and for that reason denied his application for such allotment, did in effect, deny that the relator was a member of said band; and that, according to the answer, the relator's failure to produce proof of such membership to the Secretary of the Interior, was the sole cause for the denial of his claim.

The plea to the answer now raises the issue as to that alleged decision of the Secretary, and as to the reason on which the decision was based; and it seems to me that on this issue the documentary evidence offered was competent, and must be considered by the court.

Contained in one of these papers is the statement made in an affidavit filed by the relator with the representative of the Government, dated February 27th, 1901, and in which it is stated he was married on February 16th, 1891, to Cora Caruth, a member of the Wichita tribe of Indians. This is in the letter from the Commissioner to the Secretary, of April 18th, 1901.

This letter also states that the said relator went among the Indians of the Wichita reservation, in 1882; that the Indian name of the woman he married was Ke-ah-sun-ni-as, a Wichita woman; that in 1891 said relator signed the agreement with the Indians negotiated April 4th, 1891, and confirmed by act of Congress of March 2nd, 1895; that his name first appears upon the Wichita tribal rolls, (meaning the grass payment rolls,) in March, 1894, but he was not paid at that time, no authority for such enrolment appearing; that he was paid a *pro-rata-share* of the grass money in 1895-96, and his name continued on the rolls until the action of February 7th, 1898, wherein the department disapproved of some twenty-nine adoptions which were asked for, when his name was taken off by the Indian agent.

It also appears that at a meeting of the council of said tribe on April 23rd, 1897, 92 voted for his adoption, and 24 voted against it. That the only reason for his adoption given by the tribe was the fact that he had married the Indian woman in 1891. It also appears that in their council of February 21st, 1895, the said Indians rejected his application for admission to their tribe.

20 It also appears by a letter from the Commissioner to the Secretary, dated June 7th, 1895, that it had been the policy of the Indian Office to refuse to recommend the approval of the adoption by Indians of white persons, or others, unless good and sufficient reason existed therefor; that it was the desire and aim of said office to carry out the policy of the Government, in causing the breaking up of the tribal relations, the taking of land in severalty by the Indians, and their assimilation into our civilization as citizens of the United States.

The Commissioner states in said letter:

"It is the policy of this office to break up their tribal relations by making citizens of Indians, and not to increase their number by making Indians of citizens."

It also appears from the evidence in these documents, that certainly as early as 1884, the regulations promulgated by the Interior Department governing Indian affairs, did not recognize persons, not Indians, as entitled to the tribal rights of Indians, unless they had been adopted by the tribal authorities, and such adoption approved by the Indian Office; or unless such rights had been specially provided for by treaty, or special act of Congress.

It nowhere appears in any testimony offered that the Indian Office, or the Department of the Interior, has ever approved of the adoption of the relator, although the vote of the council of Indians of April 23rd, 1897, and again a vote of May 21st, 1901, *was* in favor of the adoption of said relator into said tribe. Notwithstanding these two votes and recommendations on the behalf of the Indians themselves, or a majority of them, the Secretary of the Interior, decided and announced in said letter of July 3rd, 1901, to the Commissioner of Indian Affairs, that such adoption and enrolment should be denied.

The language used by the Secretary in reference to the relator, is as follows:

"Willis C. West.—Agent Randlett reports that applicant is a highly respectable white citizen of Minco, I. T., married to a Wichita woman, and recommends approval of his adoption. The vote of the council of May 21st, last, was 34 in favor and 5 opposed; chiefs 5 in favor, 2 opposed.

This case has been fully reported to the department in your letter of April 18th, last with unfavorable recommendation, for the reason that you do not think that "residence with the Indians since 1882, and marriage into the tribe in 1891, in the absence of evidence to show any consideration or services rendered the tribe, are such (facts) as should entitle him to receive benefits with the Wichitas." The wife and children will receive allotments with the Indians, and as applicant does not live with the tribe, and seems well to do, he should take his chances with other outsiders when the lands are opened to homestead entry, and the application of Willis C. West for enrolment by adoption with the Wichita tribe is denied."

The contention of the relator is that the Secretary arbi-
21 trarily refused to approve of the allotment to which he, the relator, was entitled; and that he did not in good faith have before him any question as to the regular or legal adoption of the relator into said tribe.

As to the refusal to approve the allotment selected by the relator, the petition itself is confirmed by the answer so that there is no dispute whatever as to the fact that the Secretary did so refuse.

It seems to me that the evidence shown by these documents, and particularly the above recited action of the Secretary, in the letter of July 3rd, 1901, states clearly the reason for such denial on the part of the Secretary of the relator's claim for the allotment, namely, that the said relator was not a member of said tribe by adoption, although the Indians had, on two occasions, by a majority vote, recommended his adoption. The evidence also shows to my mind that it was not within the power of a band of Indians, under Government guardianship, to enlarge their band by adopting into it

white men, without the approval of such adoption by the Government.

I must therefore find the issue joined on this plea, against the relator, and in favor of the defendant. Whether the decision of the Secretary in refusing to approve the adoption is right or wrong, it is not material for this court to consider.

The Supreme Court of the United States seems to have made this point very plain in the case of The United States, *ex rel.* Riverside Oil Company, *vs.* Hitchcock, Secretary, &c., (190 U. S. 324). The court there says with reference to the duty of the Secretary in that case:

"Having jurisdiction to decide at all, he had necessarily jurisdiction: and it was his duty to decide as he thought the law was, and the courts had no power whatever under those circumstances to review his determination by mandamus or injunction."

Now, in the present case, if he had the right to decide on the testimony submitted, including the affidavit of the relator, the fact that the said relator *was* or *was not* a member of said tribe by adoption, although he may decide it wrongly, this court can not review his decision.

This decision was made in the performance of an executive duty with which he is charged by the general law: and the courts are without power to correct errors of judgment in the performance of such duties. This conclusion must necessarily require the court to deny the relator's motion for a peremptory writ of mandamus, and to dismiss his petition.

At the request of counsel for the defendant, the court makes the following findings of fact:

(1.) On all the evidence the court finds for the defendant, on the grounds that the evidence is insufficient in law to support a finding for the relator.

(2.) The court finds that the defendant did reach and announce a conclusion and decision that the relator was not, by nativity or
22 adoption, a member of the Wichita and affiliated bands of Indians, and for that reason was not entitled to an allotment of land as prayed, and that thereupon the defendant did deny the application of the relator for such allotment.

(3.) The court finds that the defendant, as Secretary of the Interior, disapproved the application of the relator for membership by adoption in the Wichita tribe or band of Indians.

And at the request of the counsel for the defendant, the court finds as matter of law:

(1.) That before any person can be entitled to an allotment of land under the act of Congress approved March 2nd, 1895, ratifying the agreement of June 4th, 1891, as an adopted member of the Wichita or any affiliated band of Indians, such person must show that his adoption as such member has been approved by the Secretary of the Interior.

(2.) The court further finds as matter of law, that it was the duty of the Secretary of the Interior in passing upon the application of the relator for an allotment of land, to determine whether or not

said relator was within the category of persons entitled to such allotment, and that the decision of the defendant in that regard can not be reviewed by this court in this proceeding.

JOB BARNARD, *Justice.*

Memorandum.

April 12, 1905.—Appeal bond filed.

Supreme Court of the District of Columbia.

WEDNESDAY, *April* 12, 1905.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * * * *

At Law. No. 44853.

UNITED STATES *ex Rel.* WILLIS C. WEST
vs.
ETHAN A. HITCHCOCK, Sec'y of Interior.

Now comes here the relator and tenders to the court here his bill of exceptions taken during the trial hereof, and prays that the same be duly signed, sealed, and made part of the record, which is accordingly done.

23 *Bill of Exceptions.*

Filed April 12, 1905.

In the Supreme Court of the District of Columbia.

No. 44853. Law.

THE UNITED STATES *ex Rel.* WILLIS C. WEST
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior.

Be it remembered that the above entitled cause came on for trial before Mr. Justice Barnard without a jury, neither party having required in writing a trial by jury, on April 12, 1905, Messrs. William H. Robeson, W. C. Shelley, Walter S. Field and Samuel A. Putnam appearing on behalf of the relator, and Messrs. Morgan H. Beach, United States attorney, Jesse C. Adkins, assistant United States attorney, and Fred H. Barclay, assistant attorney, Interior Department, appearing for the defendant.

And thereupon the relator, to maintain the issues on his behalf joined, gave in evidence the following duly certified copy of the decision of the Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *July* 3, 1901.

The Commissioner of Indian Affairs.

SIR: I am in receipt of your letter of the 19th ultimo, inclosing for the consideration and determination of the department, communications from Lt. Col. James F. Randlett, Indian agent of the Kiowa agency, Oklahoma, dated May 23d, 25th and 28th, and June 7th, and 10th, 1901, respectively, together with a number of letters and papers from other persons concerning the applications of the following named persons for enrolment by adoption with the Wichita and affiliated bands of Indians of the Kiowa agency:

* * * * * * *

Willis C. West.

In his letter of May 23d, last, Agent Randlett, in returning a list of names of applicants, for adoption, submitted by Towaconie Jim and White Bread, during their recent visit to this city, which was sent to him for investigation and report, states that

"It is apparent that the visit of White Bread and Towaconie Jim recently made to Washington was investigated by the white men interested in the matter under consideration, and it now appears that leading men of the tribe have been led to believe that it will be for the interest of their people to have said white men fully incorporated with them, etc., etc."

24 Again Agent Randlett in a letter of April 10th, last reported that he had

"reason to believe that their present visit to Washington was induced by influence of white men married into their tribes and desiring enrolment with them, whose present interest prompted them to furnish the money for expenses of the delegation while away from the reservation," etc., etc.

You report that Agent Randlett adds that he has carefully considered the question of holding to the wishes of these Indians in the adoption of the white men named above, and is inclined to believe that if the same were approved, the whites so admitted would select their allotments and the Indians who are interested in their admission and are now holding back, would follow their example; and that the number of the persons adopted, if added to the roll, would not increase the allotment list to the 1060 provided for in the agreement for the relinquishment of their surplus land. He also transmits the formal proceedings of a council of the chiefs and headmen of the Wichita and affiliated bands of Indians, held May 21, 1901, for the purpose of acting upon the cases of persons seeking admission to their tribes by adoption, in which their votes on each application for such membership is shown. You further state that it also appears in this council record, that after the chiefs and headmen had voted upon the names presented, the agent took a vote of the chiefs alone on said applications, which vote agrees with the action of the full council in all cases except those of Miss Adelia L. Strong and Miss Kate Dagnett. In the first case, the full vote was a tie,

and the chiefs voted 5 in favor to 2 against; and in the latter case, the full council rejected Miss Dagnett by 27 to 18, while the chiefs accepted her by a vote of 4 to 3 against.

All the 47 cases above mentioned are taken up by you in alphabetical order, and in detail, and a report is submitted on each case. Your report, and all the papers have received the careful consideration of the department, and the decisions as made in each case are as follows:

* * * * * * *

Willis C. West.—Agent Randlett reports that applicant is a highly respectable white citizen of Minco, I. T., married to a Wichita woman, and recommends approval of his adoption. The vote of the council of May 21st, last, was 34 in favor and 5 opposed; chiefs 5 in favor, 2 opposed.

This case has been fully reported to the department in your letter of April 18th, last, with unfavorable recommendation, for the reason that you do not think that "residence with the Indians since 1882 and marriage into the tribe in 1891, should, in the absence of evidence to show any consideration or services rendered the tribe, are such as should entitle him to receive benefits with the Wichitas." The wife and children will receive allotments with the Indians, and as applicant does not live with the tribe, and seems well to do, he should take his chances with other outsiders when the lands are opened to homestead entry, and the application of Willis C. West, for enrollment by adoption with the Wichita tribe is denied.

* * * * * * *

The enclosures of your letter of the 19th ultimo, and those forwarded with previous letters in relation to the above adoptions, are herewith returned.

Very respectfully, E. A. HITCHCOCK, *Secretary.*

Thereupon the relator having rested, the defendant, to maintain the issues on his behalf gave in evidence duly certified copies of the following rules and regulations and correspondence of the Interior Department.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 18, 1884.

The honorable the Secretary of the Interior.

SIR: I have the honor to submit herewith for your approval, a revision of the "Instructions to Indian agents" of October 1, 1880, entitled "Regulations of the Indian Department, 1884," containing the regulations in force at the present date governing the management of affairs growing out of Indian relations.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *September* 22, 1884.

The Commissioner of Indian Affairs.

SIR: The revision of the regulations of the Indian Department submitted with your letter of February 18, 1884, and again submitted September 19, 1884, with corrections and amendments, also with remarks made in response to criticisms of this department thereon, having been further examined, is herewith returned approved.

Very respectfully, H. M. TELLER, Secretary.

162. Citizens or persons not Indians, who have not been adopted by the tribal authorities, have no legal status in an Indian tribe unless they are specially provided for by treaty or special act of Congress, and cannot therefore share in any annuities paid to an Indian tribe. (§ 87 Ins. 1880.)

26 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *December* 5, 1893.

The Secretary of the Interior.

SIR: The inclosed office letter of February 21, 1893, is respectfully returned to the department with advice that the accompanying regulations have been reconsidered and revised as far as relates to rules for the government of courts of Indian offenses, and the rules for Indian schools have been removed and will be submitted for your consideration and approval in separate form.

Very respectfully, your obedient servant,

FRANK C. ARMSTRONG,
Assistant Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 28, 1893.

The Commissioner of Indian Affairs.

SIR: The revision of the regulations of the Indian Department submitted with your letters of February 21, 1893, and 5th instant, has been examined and is herewith returned approved except as to the following clause: "Indian women married to white men, or to other persons not entitled to the benefits of this act, will be regarded as heads of families. The husbands of such women are not entitled to allotments, but their children are." This clause should be omitted.

Very respectfully, HOKE SMITH, *Secretary.*

157. Persons not Indians, unless adopted by the tribal authorities, which adoption must be approved by the Indian Office to be valid, or unless they are specially provided for by treaty or special act of Congress, have no legal status in an Indian tribe and can not share in any annuities paid to said tribe. (Sec. 162, Reg., 1884.)

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *March* 1, 1904.

The following regulations governing the management of affairs growing out of Indian relations are promulgated for the information and guidance of all concerned, and will supersede those of 1894 on April 1, 1904.

Indian agents and all other officers of the Indian Department are enjoined to carefully study the regulations herein set forth and to render a strict compliance therewith in every particular.

Papers or accounts not made out in the prescribed form may be returned to the officer by whom prepared for restatement while a continued disregard of the regulations laid down on the
27 following pages will render the offender liable to suspension or removal from office.

W. A. JONES,
Commissioner.

Approved:
ETHAN A. HITCHCOCK,
Secretary of the Interior.

327. Persons not Indians, unless adopted by the tribal authorities, which adoption must be approved by the department and the Indian Office to be valid, or unless they are specially provided for by treaty or act of Congress, have no legal status in an Indian tribe and cannot share in any annuities paid to said tribe.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *June* 7, 1895.

The honorable the Secretary of the Interior.

SIR: I have respectfully to submit, for your information and consideration, a letter dated April 8, 1895, from Captain F. D. Baldwin, U. S. A., acting Indian agent of the Kiowa &c. agency, Oklahoma, relative to adoptions by certain Indians of the Kiowa &c. Agency of certain persons to membership with them.

The said communications of April 8, from Capt. Baldwin, is a report in reply to letter from this office dated January 7, 1895, which I quote at length for your full information as follows:—

"I am in receipt, by reference from Hon. D. P. Flynn, of a communication, dated the 14th ult., from Mrs. Philomene Purdy who states that her mother was an Indian woman of the Sac tribe; that she did not get an allotment of land with the said tribe for the reason that her grandparents were driven away by these Indians for aiding the whites in the Sac and Fox war; that she is now living with the Wichita and Caddo Indians by whom she and her three sons were adopted last winter; that there is some objection made against such adoption by some white men who are married in the tribe because it will be a few dollars out of their families; and she

asks if land cannot be allotted to them before the country is opened to white people."

Upon looking up the records in this office I find that the said Mrs. Purdy, under date of January 23, 1893, applied to this office for an allotment of land with the Kickapoo Indians, with whom she was then living, and was advised by this office on February 25, 1893, that unless she was a member of the Kickapoo tribe or had been legally adopted by the said tribe, with the sanction of the department, she was not entitled to an allotment of land on the Kickapoo reservation.

On December 9, 1893, Capt. Brown, the then acting Indian agent of the Kiowa &c. agency, transmitted to this office the proceed-
28 ings of a council of the Wichita, Caddo and affiliated bands of Indians adopting Mrs. *Prudy* (presumed to be Purdy), Frank Prudy, Earl Prudy and Vernon Fred Prudy, to membership with them, and asked instructions from this office relative to placing their names upon the rolls of the said Indians. In reply he was instructed by this office under date of December 23, 1893, that

"Before this office would be willing to take any action in this case, looking to the placing of the names of these persons upon said rolls, more information will have to be furnished. No reason whatever is given in the proceedings why these parties should be put upon the rolls of the said tribes. If the office took favorable action in every case where Indians recommend that enrollments of outsiders be made, there would be no end to them. In exercising its function as guardian of the different Indian tribes, the Government has found it necessary to protect them from scheming white men and others who, for the sake of land and money benefits that they hope to secure thereby, seek admission into such tribes as members thereof. The office is careful, therefore, to see that Indians are not imposed upon in any such manner.

'I do not mean by this to convey the idea that the present applicants have any such motives, but, to satisfy a rule of the office which past experience rendered it necessary to establish, some good and thoroughly sufficient reason must be advanced why favorable action should be taken in the present case.'

"However, Capt. Brown failed to make a further report to this office concerning the said adoptions, and, under date of February 20, 1894, Lt. Maury Nichols (your predecessor) was instructed as follows:

'I enclose herewith a communication from your predecessor, Capt. Brown, dated December 9, 1893, in which he transmitted to this office the proceedings of a council of the Wichitas, Caddos, and affiliated bands, held at this agency October 16, 1893, at which Mrs. Prudy, Frank Prudy, Earl Prudy, Vernon Fred Prudy, John Hansel, Willie Hansel, Nellie Hansel, Allen H. Sloan, Mrs. Curtice, Miss Curtice and Mrs. Dowing, were adopted as members of said tribes including an equal share in the lands and annuities.

The office under date of December 23, 1893, wrote to Agent Brown for further information concerning these adoptions, to which as yet,

no reply has been received. You will therefore examine your files, and after reading this letter comply with its instructions.

In this connection I also enclose a communication dated the first ultimo, from Ellen Sloan, who states that she was adopted by the above mentioned council and would like to know if this office has approved the same.

This is sent you for your recommendation and report. You will with such report, return the two enclosures.'

" In connection with the above mentioned Hansels, it is presumed by this office that this is the same family that attempted to
29 secure enrolment and adoption with the Indians of the Cheyenne and Arapahoe agency, Oklahoma, in 1892.

Under date of March 31, 1891, one Christian Hensall applied to the agent of the Cheyenne and Arapahoe agency stating that he, a white man, had married a Pitt River (Cal.) Indian by whom he had four children—Ellen F. (now Mrs. E. F. Sloan), Nellie K., John and William Hensall; that his ' first ' wife died in California in 1877; that he afterwards married a Cheyenne woman of the Cheyenne and Arapahoe agency who died in 1879, without issue; and asking that his children, if entitled thereto, be adopted into the said tribe of Indians and be given allotments of land with them.

Under date of February 24, 1892, seven Indians, ' chiefs and headmen ' of the above agency, signed a paper purporting to adopt the said children of Christian Hensall. However, a majority of the said tribe of Indians afterwards—during their negotiations with the Cherokee Indian commission for the sale by them of certain of their lands—objected to the said Hensall children becoming parties to the transaction, and refused to recognize them as having any rights whatever with their tribe. In view of this objection the matter was referred to the Secretary of the Interior, under date of April 8, 1892, for his decision. The Secretary, under date of April 20, 1892, decided that the said applicants were not entitled to enrolment or adoption with the Indians of the Cheyenne and Arapahoe agency.

Up to the present time no reply has been received to the above instructions to your predecessor.

Further, Lt. Nichols, under date of February 19, 1894, transmitted to this office, without remarks or recommendation, papers marked ' A,' ' B,' and ' C,' being apparently the proceedings of councils with the Wichita, Caddo and affiliated tribes of Indians, in which they asked permission to adopt into their tribes certain persons, 29 in number, 18 to have full benefits of land and annuities, and 11 to have land only. I am unable to state whether or not these council proceedings contained the names of Mrs. Purdy and her sons, for the reasons that the papers were returned to acting Agent Nichols by this office under date of March 3, 1894, and he was instructed to take further action in the matter as follows:

The reasons assigned by the Indian council for desiring the adoption of the eleven persons on list ' A ' are that ' they are Indians from other countries and have lost their rights and have no land unless we give it to them.'

The reasons as to list 'B,' which seems to be a list of thirteen white persons, are that, 'they have married our daughters and in so doing have become our sons and part of our people.'

As to list 'C,' embracing five names, the reasons given are 'that they have married Indian men of our tribes and have become our sisters in so doing—4 married women and one minor child.

In reply I have to say that it is not customary for this office to recognize and take action upon council proceedings of Indian tribes in matters of such importance, unless the councils are regularly called, with the knowledge of the agent and certified by him to be the action of the council and that such action is expressive of the wishes of the tribe.

The papers forwarded by you, purporting to be the action of the chiefs and headmen of the 'Wichita, Caddo and affiliated bands,' are altogether informal, all apparently in one handwriting—including the signatures of the 'chiefs and headmen' without witnesses or agent's certificate, although it is true they appear to have been subscribed before a U. S. commissioner whose seal is affixed.

There is nothing to show that the council was a proper one; that it had any authority to act; that it represented the tribes or that its action expressed the wishes of the majority. It is not shown even that it was an open council to which the Indians generally were invited. Now as to the adoption of these people I have this to say:

Article V of the agreement of June 4th, 1891, with the Wichita and affiliated bands, which is now before Congress for its action provides as follows:

* * * 'Provided, if any sum of money shall be allowed by Congress for surplus lands, it shall be subject to a reduction for each allotment of land that may be taken in excess of one thousand and sixty (1,060) at the price per acre, if any, that may be allowed by Congress.'

This provision should be fully understood by the Indians before passing upon the question of the adoption of the 29 people referred to. For every allotment taken in excess of 1060 a reduction will be made from the purchase price paid them, for each allotment taken in excess, at the rate per acre allowed for their surplus and this should be made clear to the Indians.

It is not seen what good reason there is for foisting the 11 people reported on list 'A'—being Indians from other tribes—upon the Wichitas and affiliated bands, excepting possibly Jane Shirley who it appears has been living with them since 1855. Still if they are Indians and have no land elsewhere there may be some excuse for it, the Wichitas, &c., being willing.

There is better reason perhaps in the case of the women who have married into the tribe, as reported on list 'C.'

The 13 on list 'B' seem to be white men (possibly some are mixed bloods) who have married into the tribe. Of some of these it is stated that they have large families. Now if their wives and children get 160 acres each, when allotments come to be made — the pending agreement, with other tribal benefits, as they undoubtedly

will, being members of the tribes, the propriety of admitting the white fathers to membership with full rights in lands and annuities is at least doubtful.

I desire you to lay these matters before the chiefs, headmen and principal men of the reservation, and if, after full discussion
31 it shall seem to be the general desire to have these 29 people adopted into the Wichita and affiliated tribes, then let a council be called and formal action taken to that end.

The correct name for each applicant for adoption should be given, with age and sex and a brief statement as to who the applicant is, where from, his fitness to live amongst the Indians, and any other information to enable this office to deal intelligently with each case and decide for itself as to the justice and wisdom of recommending the approval of the adoptions or either of them.

Your own views and recommendations for or against, in each case, would be of value to this office and are desired as far as you may be able to offer them.'

In view of the fact that no reply has as yet been received in answer to the above office instructions, and that considerable time has now elapsed, you will, as soon as convenient, take up the cases in question, carefully investigate the same and make report upon them to this office, as per quoted instructions to your predecessors."

The acting agent in his said report of April 8, states that on February 21, 1895, he called an open council of the Wichita and affiliated bands of Indians of the Kiowa agency, at which the matter of adoptions was carefully explained to them, after which they took action on each case presented, as shown by the council proceedings which he encloses with his report. The said council proceedings show that the Indians, of whom 35 were present, voted as follows on the names of persons submitted to them for adoption:

White Women Married Into Their Tribe.

* * * * * * *

White Men Married Into Their Tribe.

* * * * * * *

	Ayes	Nays.
Willis West.....	13.	17

* * * * * * *

The acting agent states in regard to the above that he approves the action of the Indians as shown by their votes in their adoption of the white women, excepting Nannie Shirley; that as to the white men, he can only approve of the adoption of Dr. J. J. Sturm, Robert Lee Curtis and William Shirley; that as to the persons claiming to belong to other Indian tribes, he approves the action of the Indians as shown by their votes in the said council proceedings.

He further states that most of the white men whose names were presented to the Indians have in many ways shown that their only reason for being on the reservation, or for marrying squaws, has been simply to obtain privileges which most deserving whites are deprived of, or in other words, that their only object and aim
32 has been of a mercenary character; that several of them have become wealthy and now have under fence great tracts of land for which they do not and never have paid grass rent.

It is noticed that the said acting agent only recommends the approval of this department of the adoptions of Blanche Williams, May Curtis, May Downing, Dr. J. J. Sturm, Robert Lee Curtis, William Shirley, John Hansel, Mrs. Philomin Purdy, Frank Purdy, and Wm. Corett—10 persons in all.

It has been and is the policy of this office to refuse to recommend the approval of the adoption by Indians of white persons or others, unless good and sufficient reasons exist therefor; as it is the desire and aim of this office to carry out the policy of the Government in causing, so soon as possible, the breaking up of tribal relations; the taking of lands in severalty by the Indians, and their assimilation into our civilization as citizens of the United States. I do not therefore think that it would be wise to sanction the adoption of persons—whites or Indians of other tribes—by Indians into their tribes, thereby increasing the same unless for exceptionally good reasons, which is not shown to be the case in the adoption of any of the above named persons by these Indians. It is the policy of this office to break up their tribal relations by making citizens of Indians, and not to increase their numbers by making Indians of citizens. Further, experience has shown that it is a very, very easy matter to influence Indians by bribery and otherwise to adopt whites and others into their tribes; and that in a great many cases where adoptions have been made, it has resulted in benefitting only the persons adopted.

I would therefore recommend, that all of the above adoptions be disapproved, and this office be directed to notify the acting Indian agent of the Kiowa &c. agency to that effect.

I enclose herewith all of the papers in the case, with request that the same be returned to the files of this office.

Very respectfully, your obedient servant,

D. M. BROWNING,
Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *April* 18, 1901.

The honorable the Secretary of the Interior.

SIR: This office has the honor to acknowledge the receipt, by department reference of January 30, 1901, for consideration and report, of a letter without date from Wm. C. Shelley, attorney-at-law, who submits the application of Mr. Willis C. West, a white man, for the correction of the Wichita tribal rolls, Kiowa agency,

Okla., to the end that he may be re-enrolled as a member of the Wichita tribe of Indians.

The said attorney states that this man married a Wichita
33 Indian woman (in 1891) and was duly recognized as a member of her tribe according to its usages and customs; that when the agreement of June 4, 1891, was made with this tribe of Indians he signed the same as an Indian, his signature being No. 101; that he was regularly on the rolls of the tribe at this time; "else his signature had not been accepted by the commission;" that his name is found on the roll of per capita payments made to this tribe in March, 1894—the first roll of such payments—and it also appears on the similar roll of 1895; that having been thus fully recognized as an Indian he needed no further recognition; that in the early part of 1895 some parties, interested in getting their names on the rolls of the tribe, caused a council of the Wichita and affiliated bands of Indians to be held at which the names of some 29 persons were submitted for admission—among them being the name of his said client, which was submitted without his knowledge or consent; that these applications or adoptions were forwarded to this office and the cases sent to the department under date of June 5, 1897, with the recommendation that all of them be disapproved; that the department disapproved all of them on February 7, 1898; whereupon this office directed the Indian agent of the Kiowa agency to "inform all parties interested of this action in the premises;" that under this direction the Indian agent struck the name of the said applicant from the Wichita tribal rolls, which name was already on the rolls by previous tribal and departmental action; and that the department was not at this time advised that this man was already on the rolls, and this disapproval of a subsequent council action could have no effect upon him as his rights had vested.

Mr. Shelley adds that there can be no doubt that the name of his client was lawfully and properly on the rolls on June 4, 1891, on which date the tribe to which he belonged signed an agreement with the United States for the sale of its lands, and by the 5th section thereof (28 Stat., 396) provided—

That 1,060 allotments should be deducted from the lands so sold, which number, 1,060, was the total tribal membership, native and adopted, at that time. Mr. West *being then on the roll*, his allotment was here expressly provided for, and the agreement being ratified by Congress, his right to an allotment as an adopted Indian became vested with such ratification, by congressional enactment, if it had not been before by tribal action and departmental sanction.

In reply I have respectfully to state that under date of February 7, 1901, the case was referred to Lt. Col. J. F. Randlett, the Indian agent of the Kiowa agency, for a full investigation and report, and with the following instructions in the premises:

* * * It might be well to have Mr. West make an affiadvit before you, giving the facts in full as to his case. He should state when he married the Wichita women, and when and under what circumstances he was recognized as a member of the tribe. Fur-

ther, you will ascertain from the chiefs and headmen of the
34 Wichita and affiliated bands just when they adopted him and considered him a member of the Wichita tribe. It is also desired that your report show when he was first placed upon the Wichita tribal rolls, and how long he has participated in rights with them.

Under date of the 15th ultimo Agent Randlett made reply with which he transmitted an affidavit from the said applicant relative to his case, and stated as follows relative to Mr. West's name being found on the records of the agency under his charge:

Mr. West's name first appears upon the records of this agency on the retained copy of grass payment roll of the Wichita tribe dated March 31, 1894 (Lt. Maury Nichols, U. S. A. acting Indian agent), as No. 366 composing Wichita family No 192, but no payment was made to said West upon this roll, neither is any authority cited for placing his name thereon as a member of the Wichita tribe. This was the first payment roll of which the agency has any record pertaining to the Indians of the Wichita Indian reservation. Upon this same roll appears the Indian name of Cora Caruth, the woman Mr. West claims to have married on February 16, 1891. Her Indian name was Ke-a-sun-ni-as and under this name she appears as No. 75 and head of Wichita family No. 34, on the payment roll of March 31, 1894, referred to above. On this roll family No. 34 is shown to consist of Ke-a-sun-ni-as, and Sas, recorded as the daughter of Ke-a-sun-ni-as and two years of age. No mention is made on this roll that Willis West, comprising Wichita family No. 192, is the husband of or in any manner connected with Ke-a-sun-ni-as, the head of family No. 34.

The Wichita grass payment roll dated March 27, 1895 (vou. 30, Abs. Dis. 4th quarter, 1895, Capt. Frank D. Baldwin, U. S. A., acting Indian agent), shows Willis West as No. 391, and head of family No. 192, and that at this payment Mr. West received a pro rata payment of $5.00 his receipt therefor being by mark. This roll also contains the name of Ke-a-sun-ni-as comprising the family. Neither on this roll does any notation whatever appear to show that Willis West was the husband of Ke-a-sun-ni-as (Cora Caruth or West) or by what authority he was entered upon the roll other than evidence that it is copied from the roll of March 31, 1894.

Upon the Wichita grass payment roll of January 31, 1896 (vou. 80 Abs. Dis. 3rd quarter, 1896, Capt. F. D. Baldwin, U. S. A., acting Indian agent), the name of Willis West appears as No. 381,—head of family No. 192, which family was composed only of West. On this roll West received $4.10, for which he receipted by mark. The name "Cora West" appears as No. 85 and head of family No. 34 on this roll, with note that Cora West was ("Ke-ah-sun-ni-as, last roll"—referring to the roll of March 27, 1895. A note also appears in margin after name of "Sas," who is enrolled as daughter of Cora
35 West, to the effect that Sas is daughter of No. 54 Wichita, and No. 54 Wichita is found on same roll to be Mis-se-nah, a woman 28 years of age at time of payment.

On Wichita grass payment roll of February 13, 1899, * * *

the name of Mr. West does not appear except in a note in the remarks column opposite the name of Cora West, who is enrolled as No. 132 comprising family No. 30, which note is as follows: "Wife of Willis West, adoption of Willis West disapproved." Search of the agency records discover- that the adoption of Mr. West was disapproved in office letter dated Feb. 10, 1898.

On none of the rolls of this agency where Mr. West's name appears does it appear as a member of the same Indian family as the name of the woman claimed as his wife, and at no place in the records of the agency have I been able to discover that there was ever any authority for Lieut. Nichols to place Mr. West's name on the rolls of the Wichita tribe of Indians as appears in the first instance of such record, and afterwards continued until shut off by direction of Indian Office letter above referred to.

The agent added in this case that on March 13, 1901, the chiefs and headmen of the said bands were assembled at the agency office, and were unanimous in the expression of the wish that the adoption of this white man, as voted upon by them in general council of March 23, and 24, 1897, "may receive the approval of the department and that his name be duly enrolled as a member of the Wichita tribe of the affiliated bands;" that there is every evidence that the Indians at the council of March, 1897, adopted Mr. West in good faith as recorded in the report of such council; that there is no objection known to exist, so far as he can discover, to the character of this man, or any legal reason why his adoption should not be approved; and he therefore submits the case to the favorable consideration of the department.

In the affidavit dated February 27, 1901, of Mr. West, he states that on February 16, 1891, he married Cora Caruth, a member of the Wichita tribe of Indians; that from and after this date he was recognized by the Indians of this tribe as a member thereof; that subsequently his name was duly entered upon the grass payment rolls of the said tribe, and he received for some time his pro rata share of grass moneys paid to the Wichita tribe; that his name continued to appear upon the said tribal rolls until this office in letter dated February 10, 1898, advised the Indian agent of the department's action in denying the application of 29 persons for adoption, whereupon he was informed by letter that his name had been dropped from the said rolls by direction of the department, and that he is of the opinion that the department did not have the full facts in his case when it took action on the adoption cases of the 29 persons.

As the agent failed in this letter (of the 15th ultimo) to ascertain as directed information on one of the salient points in the case, he was on the 30th ultimo instructed by this office as follows:

> In my said instructions of Feb. 7th last, you were advised in
> 36 effect that the claim was made in this case that the said applicant alleged to have been recognized by the tribe according to its usages and customs soon after his marriage with a Wichita Indian woman in 1891, and his name therefore placed on the tribal rolls; that when the adoptions of 29 persons by the said tribes were made or voted upon in council of February 21, 1895 (which included

his name), he was already a member of the tribe and his name was included in the said 29 without his knowledge or consent; and that his rejection by the Indians by a vote of 17 nays to 13 ayes had no bearing on his rights, and the subsequent disapproval of his adoption by this department and the striking of his name from the tribal rolls was an error.

You were therefore "instructed to ascertain from the chiefs and headmen of the said Wichita and affiliated bands just when they adopted him and considered him a member of the Wichita tribe."

As this desired information is not given, please have the leading chiefs and headmen make a formal statement before you, stating whether or not they considered him a member of their tribes just after his marriage to the Wichita woman, and if he was given full tribal rights and so considered from 1891 to 1895 when the tribe voted against his adoption; or if they did not consider him a member of their tribes and entitled to full tribal rights until his adoption of March 23, and 24, 1897.

I am now in receipt of the agent's reply, dated the 6th instant, in which he states that on the 5th instant he called a council of the chiefs and headmen of the said tribes, and asked them the straight question: "Had they ever considered a white man who had married into their tribes entitled to become a member of their tribes and to enrollment and rights with them?" that each of the chiefs and headmen made separate reply, each and every one stating that they had never considered a person married into their tribes entitled to be enrolled as a member of their tribes until he had been voted upon and so elected by a majority of the male members of their tribes; that he then asked them if they considered Willis C. West as a member of their tribes and entitled to enrollment, to which each replied that they considered his case the same as any other, and that he was only entitled to be enrolled with them by formal adoption the same as other persons who had married into their tribes, and that they would now like to have his adoption approved as voted for at the council of March 23, 1897.

As to the history of the present applicants' former adoption by the said Wichita and affiliated bands of Indians, the records of this office show that under date of April 8, 1895, Capt. F. D. Baldwin, acting Indian agent of the Kiowa agency, forwarded to this office the formal proceedings of a council of the said Indians held February 21, 1895, at which the cases of 29 persons were voted upon for adoption with their tribes,—among them being that of Mr. West; and in
37 this council record it is stated that he (West) had resided with them since 1882, and had married one of their women in 1891, and that the vote taken in his case was 13 ayes to 17 nays. The agent stated in transmitting the said council proceedings that as to the white men adopted, he could only approve of the adoption of Dr. J. J. Sturm, Robert Lee Curtis and William Shirley; and that with the exceptions noted he approved the action of the council as shown by their votes.

The proceedings of this council, together with the agent's report in the premises were submitted to the department in office letter

dated June 7, 1895, with recommendation that all of the applications for admission to the said tribes by adoption, including that of the present applicant, be denied, for reasons therein given. Under date of February 7, 1898, the department denied all of the applications, including that of Mr. West, giving as reasons that it is—

the policy of the department to discourage the adoption of whites into Indian tribes with whom they have no blood relation and have never had any connection unless for exceptionally good reasons, which do not appear in any of these cases.

On March 23 and 24, 1897, the Wichita and affiliated bands held a council in which the question of the adoption of the said Willis C. West was again brought up and voted upon, with the result as shown in the said formal council procedings, as follows:

By the AGENT: The names of several parties have been recommended for adoption as members of the tribes on this reservation. It rests with you whether these people shall be adopted and become a part of and be numbered with you and have all the privileges with the rest of your people or not. The majority will rule as to whether they shall become members of your people. We will vote on them one at a time * * * Willis West: 92 in favor and 24 opposed.

However this last action of the said Indians in council was not submitted to the department until recently, as at the time, the council was held, the cases of the adoptions of the 29 persons above referred to were still pending before your office.

From the facts in the case it appears that Willis C. West, a white man, went among the Indians of the Wichita reservation in 1882, and in February, 1891, married Cora Caruth (Ke-ah-sun-ni-as), a Wichita Indian woman; that in 1891 he signed the agreement with these Indians, negotiated June 4, 1891, and confirmed by act of Congress approved March 2, 1895 (28 Stats., 876); that his name first appears upon the Wichita tribal rolls (grass payment roll) in March, 1894, but he was not paid at this time; that it was placed upon the said roll presumably by Acting Agent Nichols, but there was no authority for such enrollment; that he was paid a pro rata share of the grass money in 1895 and 1896, and his name was con-
38 tinued on the Wichita rolls until department action of February 7, 1898, disapproving the 29 adoptions, when it was taken off by the Indian agent.

As to his claimed adoption in 1891 soon after his marriage with the Indian woman, the facts show that there was no formal vote upon his application for adoption until the council meeting of February 21, 1895, at which he was rejected by the tribes; that the Indians themselves did not consider him a member of their tribes and entitled to enrollment with them after his said marriage, they stating that they considered his case the same as any other, and that he was not entitled to be enrolled with them until formally adopted, the same as other persons who had married into their tribes; that he was adopted by a vote of 92 to 24 at the council of March 23, 1897, though no reason is given for his adoption except that he is a white man who married one of their daughters in 1891; and that these In-

dians still desire the approval of his adoption of March 23, 1897, which they made in good faith.

In this case I find from the facts presented that the said applicant was not as claimed adopted by the Indians of the Wichita and affiliated bands soon after his marriage to a Wichita Indian, and was erroneously placed upon the Wichita tribal rolls in 1894 by the acting agent, there being no formal adoption by the Indians nor other authority therefor; that the Indians in their council of February 21, 1895, rejected his application for admission to their tribe, and the agent very properly struck his name from the tribal rolls in 1898; and that his application for re-enrollment upon the grounds of vested rights and that the department was in error in disapproving his adoption in 1895, is not sustained. I must therefore recommend that his application for correction of the said Wichita tribal rolls by placing his name thereon, be denied.

While the said attorney does not ask that the action of the Indians in voting favorably upon his adoption in March, 1897, be considered, yet as the Indians themselves have requested that this department take action in the matter, it is thought best to consider this phase of his case. When the Indians voted upon the question of his admission to their tribe in 1895 it was stated that he had been living with them since 1882 and had in 1891 married one of their people. However, they rejected his application, and when the case was passed upon by the department it was held that "exceptionally good reasons" did not exist for his adoption and admission to membership as a Wichita Indian. His more recent adoption of March 23, 1897, by a vote of 92 to 24, which has not as yet been passed upon by the department, does not give any further reasons for his admission to the said tribe. However, the chiefs and headmen assembled in council at the agency office state that they would like to have his adoption approved by the department; and the agent reports that "there is no objection known to exist, * * * to the character of Mr. West,
or any legal reason why his adoption should not be approved,"
39 and recommends favorable consideration. Nevertheless I do not think that the reasons given—residence with the Indians since 1882 and marriage into the tribe in 1891—should, in the absence of evidence to show any consideration or services rendered the tribe, are such as should entitle him to receive benefits with the Wichitas. This office, therefore, sees no reason to recede from its unfavorable recommendation in this case made in letter to the department dated June 7, 1895.

All the papers in the case are enclosed herewith with recommendation that the same be returned to the files of this office.

Very respectfully,

A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *February* 7, 1898.

The Commissioner of Indian Affairs.

SIR: I am in receipt of your letter of the 12th ultimo, calling attention to a communication from your office dated June 7, 1895,

in the matter of the application of certain persons (29 in number) for membership, by adoption, with the Wichita and affiliated bands of Indians, and asking for instructions in the premises.

In seems that eighteen of the above named persons are whites who have married into the tribe, and eleven are persons who claimed to belong to other bands of Indians—that most of the white man (14 in number) have shown that their only reason for being on the reservation, or marrying squaws, has been simply to obtain privileges which most deserving white men are deprived of, and that several of them have become wealthy and have under fence great tracts of land for which they do not, and never have, paid grass rent. Of the eleven who claimed to be Indians, but four received an affirmative vote for their adoption by the tribe in council.

In view of the policy of the department to discourage the adoption of whites into Indian tribes, and of Indians of other tribes becoming affiliated with tribes with which they have no blood relation and have never had any connection, unless for exceptionally good reasons, which do not appear in any of these cases, the recommendation of your office that these adoptions be disapproved, is concurred in.

All the papers in the case are returned herewith.

Very respectfully, C. N. BLISS, *Secretary.*

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *Dec.* 13, 1884.

The Commissioner of Indian Affairs.

SIR: I return herewith the enclosures which accompanied your report of the 12th instant in relation to the action of the Quapaw Indians in the Indian Territory, in assuming the right to adopt into their tribe, and allow rights upon their reservation to other
40 Indians and white persons whose presence among them is detrimental to their peace and welfare.

Agreeably to your recommendation authority is hereby granted for the removal from the lands of the Quapaws, under section 2149 of the Revised Statutes, of all such persons whose presence thereon is detrimental to the peace and welfare of the Indians; and the Quapaws should also be informed through their agent that their action in the measures of adoption taken by them is disapproval by the department, and that whenever they desire to adopt any person or persons into their tribe, the case with all the facts necessary for determination, must be *ad*mitted through their agent to your office for the action of the department, and that applicants for adoption, pending the decision of the department, must be kept off of the reservation.

Very respectfully, M. L. JOSLYN,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *September* 8, 1900.

The Commissioner of Indian Affairs.

SIR: I am in receipt of your letter of the 14th ultimo, in which you submit, for the consideration of the department, a communica-

tion from Col. James F. Randlett, Indian agent of the Kiowa agency, Oklahoma, dated March 10, last, reporting on the application of H. P. Pruner, (submitted by Mr. W. C. Shelley, attorney at law of this city) for admission, by adoption, to membership in the Wichita and affiliated bands of Indians of the Kiowa agency.

Mr. Shelley in his letter of February 26, 1900, states that Mr. Pruner married a Delaware Indian woman many years ago, and is now the head of a family; that he was duly adopted into the tribe, according to its laws and usages, and his name placed on the roll of membership thereof by the U. S. Indian agent; that the exact date of his adoption cannot be given, because the records of the agency do not seem to have been very carefully kept, or preserved, until within the last five or six years; that his name is found on the census roll of the Delaware tribe now on file in your office, for the year ending June 30, 1897, as number seventeen, that from the time of his marriage and adoption up to 1895, no question was ever raised in any quarter as to his Indian rights, but that he was in full and undisturbed enjoyment of the same; that in the spring of 1895, after the tribal reservation had been sold to the United States, a number of white men who had more recently intermarried with said tribe, but had never had their tribal rights recognized, and others, caused a council of said Indians to be held, and secured the adoption at that council of some twenty-nine persons; that without Pruner's consent or desire, his name was included in the list, notwithstanding that he was then a full member of the tribe by former adoption and recognition by the department; that upon the recommendation of
41 your office, the department under date of February 7, 1898, disapproved the adoption of all, mentioning none by name, but disposing of them as a lot, and the Indian agent, February 10, 1898, was directed to "inform all parties interested of this action in the premises," and the agent proceeded to take Mr. Pruner's name from the rolls. Mr. Shelley claims that when the above mentioned "adoptions" were submitted to the department for approval, it was not informed that Pruner was already on the rolls by prevjous adoption and departmental approval, and that, had the department been fully advised as to the facts in the case, a different ruling would have been made, and that the facts in Pruner's case are "practically identical with those set up" in the case of John Downing, upon which the department took favorable action.

Agent Randlett, of the Kiowa agency, in reply to the statements made, reports that the facts in Mr. Pruner's case, so far as he can learn from the records of the agency, and from Pruner's own statements, are, that he came to live with the Delaware Indians in the fall of 1871, and in 1875 married Lucy J. Osborn, a full blood Delaware woman, with whom he has since lived, and now has two children, that he admits that he has never attended a council of said Indians, and has no knowledge of his ever having been formally adopted previous to the council proceedings of June 7, 1895, but that previous to this council some Indian agent, whose name he does not remember, had told him that he had been adopted. The agent further reports, that he can find no record in any of the files of the

agency wherein said applicant is shown as ever having been adopted by the Wichita and affiliated bands, except a note in red ink on an old census record book, where occurs his name, with the remark: "Adopted by the council held with Cherokee commissioner at Anadarko;" that there is no date as to when this remark was entered, nor evidence by whom it was made; that his name does not appear on the grass payment rolls of 1894, 1895 and 1896; that he has never been paid any of the grass money which these Indians have received from leases of their lands; that in fact there is nothing upon the records to show that Mr. Pruner's name was previously borne upon the rolls as a member of the Delaware tribe, as claimed by him, and that, therefore his claim intimating that he has received full tribal rights as a member of said tribe, from the time of his marriage in 1875 until 1895, "is not warranted by the facts."

The agent further states that the fact that Mr. Pruner signed the agreement with the Wichita and affiliated bands, of June 4, 1891, "by permission of the commissioners" only shows that said commissioners were not particular in ascertaining what persons, before signing the agreement, had a legitimate right for so doing.

Relative to the charge made that the agent took unwarranted action in striking Mr. Pruner's name from the rolls, in accordance with the decision of the department, Colonel Randlett says that the only reason for Pruner's name appearing on the census roll of June
42 7, 1897, "was his embryo adoption shown in the record of the council of March 24, 1897," and that any action in taking his name from the roll, in view of the department's decision in the premises, was entirely correct, because his name "was never stricken from any roll of this agency which was there by previous tribal and departmental action," and he concludes by saying that "to open the door for the entrance of the crowd of persons interested in the result of this case, as it has been represented to the department, would result in unending appeals, most of which would be shown to be without the least foundation."

Under date of July 31st, last, your office called upon Agent Randlett for additional information in regard to any issue of clothing, subsistence, or annuity goods to Mr. Pruner, prior to 1891, and he reports that the records of the agency for 1891 and prior years, are very incomplete, but "search through the papers that are available, shows that annuity goods, subsistence, clothing, etc., were issued to Mrs. Pruner as the head of her Indian family. No record was found where issues were made to H. P. Pruner." The agent further states, that some of the census books for years prior to 1891 were found, "but Mr. Pruner's name does not appear in them. The name of Mrs. Pruner appears, as do the names of her children by her former husband, one Osborn, and also by Mr. Pruner;" that the census records for 1891 contain the name of Mr. Pruner," but it is not entered with the names of Mrs. Pruner and her children." Mr. Pruner's name is alone as constituting "a family apart from that of his wife. In this record for 1891, no note appears stating the reasons for the entry of his name upon the census book as a member of the Wichita and affiliated bands of Indians."

"In the general record book for the names of Indians of this agency, the name of Mrs. Pruner appears at the head of the family composed of Mrs. Pruner and her children, and in the margin, opposite Mr. Pruner's name, is this note, in red ink: "'Adopted at council held with Cherokee commissioner at Anadarko.'"

In submitting this case for the consideration and decision of the department, you say that, from the facts in the case, it would appear "that the applicant, who is a white man, went among the Delaware Indians residing on the Wichita, etc. reservation, in about 1871, and a few years later married a full blood Delaware Indian woman; that he was allowed to make his home with her but took no part whatever in the council proceedings of these Indians as a member of the tribe; that in the summer of 1895 (about three months after the ratification by Congress of the Wichita agreement of 1891, providing for allotments, etc. to the said Indians,) there was an attempt made on the part of a number of persons living among the said Indians to secure admission to the tribe by adoption, at which time some 29 were voted upon in a full tribal council, among them being Mr. Pruner, who was rejected by a vote of 14 in favor to 17 against admission; that this council's action in rejecting him
43 was approved by the department February 7, 1898; that prior to this council of 1895, he did not, as stated, sustain any tribal relations with these Indians or other right whatever, as is evidenced by the grass rolls of 1894, 1895 and 1896, which do not contain his name, although he appears to have signed the agreement of 1891, by the permission of the commissioners who negotiated the same; that in the spring of 1897, and while his case was pending before your office for a final disposition, another council of Indians was held, during which the matter of adoptions was brought up and his name again voted on by the Indians, with the result that 69 favored his admission and 47 opposed the same, but no recommendation seems to have been made by the agent as to this latest action of the council; that he has a good home upon the land which his wife has taken as her claim, and is in comfortable circumstances, and his wife and two children, who are members of the tribe, will no doubt receive land and other benefits with these Indians," and you add that this case is not "practically identical" with the case of John Downing, whose adoption was approved February 9, 1900.

The statement and other papers presented in the case of H. P. Pruner, who claims to be a member of the Delaware tribe of Indians, by adoption, have been carefully considered, and I find that his name does not appear on any of the rolls of the Wichita and affiliated bands of Indians prior to June 30, 1897, except on the census record of 1891; that the fact that he signed the agreement which was negotiated with said bands of Indians, June 4, 1891, cannot be accepted as establishing his right to membership in the Delaware tribe or with the affiliated bands, and that his claim that he was duly adopted into the tribe prior to June 4, 1891, according to its laws and usages, is not borne out by the evidence presented. While it appears that a council of the Wichita and affiliated bands of Indians was held at the Kiowa agency under the supervision of

Acting Agent Baldwin, on March 24, 1897, in which the adoption of a number of persons was considered and Pat Pruner was adopted; 69 in favor and 47 opposed, the proceedings of this counsel were not submitted to the department until July 14, 1900, when they were forwarded for consideration in connection with the present case. It has been the policy of the department to discourage the adoption of whites into Indian tribes, and of Indians of other tribes becoming affiliated with tribes with which they have no blood relations and have never had any connection, unless for exceptionally good reasons, and in view of this policy, I decline to approve the adoption of said Pruner by the council of the Wichita and affiliated bands, held March 24, 1897, and decide that he is not a member of the Delaware tribe of Indians, which form a part of the Wichita and affiliated bands of Indians, and you will so inform the U. S. Indian agent of the Kiowa agency, Oklahoma.

The papers transmitted with your letter are herewith returned.

Very respectfully, THOS. RYAN,
Acting Secretary.

44 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 27, 1886.

Charles Hill, Esq., U. S. Indian agent, Santee agency, Nebr.

SIR: I have received your letter of the 2d instant, enclosing a petition from the headmen of that portion of the Ponca tribe of Indians residing in Dakota (on the old Ponca reserve now a part of the Great Sioux reserve), asking that they may be allowed to adopt the following named persons into their tribe:

Samuel Spider
Jenie Spider
Emily Spider
Kate Snake.

The petition states that the first three named are from the Yankton agency, and the last named from the Ponca agency, in Indian Territory, and that they are "of Indian blood." That is all the information given.

It ought to be apparent to you that the information furnished is entirely insufficient to enable this office to act intelligently upon a matter of so much importance. The promiscuous adoption of Indians of one tribe into another tribe is not countenanced by this office, and the adoption of whites, or persons having but a slight admixture of Indian blood, is discouraged, unless there are some peculiar circumstances attending the case which would justify a departure from that rule.

In the case presented by you, it is not known whether the persons named are full bloods or mixed bloods, nor to what tribe they belong, if to any, nor does it appear what object they have in desiring to be adopted by the Poncas, or why the Poncas wish to adopt them.

You will please state the facts to a full understanding of the case.

Very respectfully, A. B. UPSHAW,
Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *April* 3, 1894.

Mrs. Jane Shirley, Minco, I. T.

MADAM: Referring to my letter to you of the 28th ultimo, relative to supposed adoption of your husband—the late Dr. John Shirley—in 1872 by the chiefs of the Comanche, Wichita and Caddo tribes of Indians, you are informed that after a further search of the records here, I find the following:

U. S. Indian Agent J. Richards of Wichita agency, under date of December 19, 1872, transmitted to this office, through Enoch Hoage, supt. of Indian affairs, the following request of certain headmen of the Comanche and affiliated Wichita Indians:

"We the chiefs and headmen of the Wichita and other
45 affiliated bands of Indians, and headmen of the Comanches, request and desire that the following named white persons may have a residence in the Indian country with all the rights and privileges, as regards property and settlement as are granted to Indians, to wit:

William Shirley of the Indian Territory, John Shirley, Chickasaw Nation, I. T., Philip McCusker, Ind. Ty. and Henry E. Alvord, of Virginia.

In witness whereof we have hereunto placed our marks the ninth day of the twelfth month (December) A. D. 1872.

ES-SE-HAB-IT, his x mark, *Chief, Comanches.*
TASH-A-WA, his x mark, " "
ES-SE-TU-I-OTT, his x mark, " "
KA-HAV-E-WAT, his x mark, " "
STRAIT FEATHER, his x mark, " "
DAVE, his x mark, " *Tawacanie.*
I-SAD-A-WA, his x mark, " *Wichitas.*
ES-QUITS-CHEW, his x mark, *2d Chief, Wichitas.*
LONG SALDEER, his x mark, *Headman Wacoes.*
WAH-LOOPE, his x mark, *Caddo Chief.*

Witnesses present,

T. CONNELL.
JNO. G. HAINES.

I certify that the chiefs and head men whose marks are hereunto attached met at the office of the Wichita agency and signed the foregoing request, Wm. Shirley, interpreting.

Wichita agency, I. T., 9th of 12th mo. 1872.

JONA RICHARDS,
U. S. Ind. Agent."

In reply to this, the office, under date of Jan. 4, 1873, instructed Supt. Hoage to the effect that it had always been the policy of the Government to permit white persons to reside with the Indians, but subject to removal in the judgment of the proper authorities; that such persons could not be adopted into an Indian tribe without legislation by Congress, which might, if had, overrun the Indian country with white persons, many of them lawless characters; that this office would not recommend such legislation; but that it had no objection to permitting white men who are proper persons to reside within the limits of an Indian reserve—this depending mainly upon the judgment of the agent—and use land the same as an Indian.

You will therefore see from the above that this office did not approve the request of these Indians that these men should be adopted into their tribes; but simply permitted them to reside upon the reservation and use land without any rights as Indians.

Very respectfully, D. M. BROWNING,
Commissioner.

46 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *Sept.* 30, 1901.

Messrs. Davidson & Riddle, attorneys-at-law, Chickasha, I. T.

SIR: This office is in receipt of your communication of the 18th inst., in which you ask to be advised whether or not this department has any rules or regulations providing for the adoption of a United States citizen or a Mexican "into the Apache or Comanche tribes of Indians, and showing what it takes to make or constitute a legal adoption." Further, you ask if a Mexican captured when young by the said tribes with whom he has continued to live has by such capture and residence acquired a legal right with the Indians, and if he is entitled to enrollment with them.

In reply you are informed that this department has held and still holds that a person in order to acquire legal and vested rights with an Indian tribe must be formally and properly adopted by the tribe in council, and such adoption approved by the Secretary of the Interior.

As to the hypothetical case you submit, the office is unable to answer you, as it can not undertake to reply to cases of such an abstract character.

Very respectfully, A. C. TONNER,
Acting Commissioner.

Each of the papers so given in evidence by the defendant was objected to by the relator at the time each was offered, on the ground that said papers were not material to the issue of the case and tended to contradict material allegations of the petition which were not denied by the answer. But notwithstanding the said objections of relator duly interposed each of said papers was admitted in evidence by the court, and to the rulings of the court in admitting each

and all of said papers, notwithstanding said objections, exceptions were duly noted by the relator.

Thereupon the defendant having rested, the cause was submitted to the court.

Wherefore, in order that the foregoing matters and things which would not otherwise appear of record may be made so to appear, and that it may be made known that the foregoing constitutes all the evidence given in the course of the trial of this cause, the attorneys for the relator pray the court to sign this bill of exception, and the same is accordingly so signed by the court and made of record this 12th day of April, 1905.

JOB BARNARD,
Associate Justice, Supreme Court of the District of Columbia.

47 *Order for Record on Appeal.*

Filed April 18, 1905.

Samuel A. Putnam, Attorney at Law, Kellogg Building, 1416 F Street.

WASHINGTON, D. C., *April* 18, 1905.

Mr. John R. Young, clerk, etc., city.

DEAR SIR: You will please make up the record for the Court of Appeals in the case of The United States *ex rel.* Willis C. West, No. 44,853 at law, including the following papers and proceedings in the supreme court of the District:

Original petition and affidavit, rule to show cause, answer and affidavit of defendant filed July 11, 1902, motion for peremptory writ, same filed September 30, 1902, order over-ruling motion for peremptory writ, demurrer to respondent's answer, order over-ruling demurrer, pleas to answer, demurrer to pleas, order over-ruling demurrer to first plea and sustaining demurrer to second, third and fourth pleas, joinder of issue on first plea, bill of exceptions and final judgment.

Very truly yours, SAMUEL A. PUTNAM,
Att'y for Pl't'ff.

Service of copy of above acknowledged this 18th day of April, 1905.

J. C. ADKINS,
Of Counsel for Defendant.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 83, inclusive, to be a true and correct transcript of the record, as per

directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 44,853, at law, wherein The United States *ex relatione* Willis C. West, is relator, and Ethan A. Hitchcock, Secretary of the Interior, is respondent, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 16th day of May, A. D. 1905.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1555. United States *ex relatione* Willis C. West, appellant, *vs.* Ethan A. Hitchcock, Secretary of the Interior. Court of Appeals, District of Columbia. Filed May 19, 1905. Henry W. Hodges, clerk.

48 WEDNESDAY, *November 8th, A. D.* 1905.

No. 1555.

UNITED STATES *ex Relatione* WILLIS C. WEST, Appellant,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior.

The argument in the above entitled cause was commenced by Mr. S. A. Putman, attorney for the appellant, and was continued by Messrs D. W. Baker and F. H. Barclay, attorneys for the appellee.

THURSDAY, *November 9th, A. D.* 1905.

No. 1555.

UNITED STATES *ex Relatione* WILLIS C. WEST, Appellant,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior.

The argument in the above entitled cause was concluded by Mr. W. H. Robeson, attorney for the appellant.

49 UNITED STATES *ex Relatione* WILLIS C. WEST, Appellant,
v.
ETHAN A. HITCHCOCK, Secretary of the Interior.

Opinion.

(Mr. Justice DUELL delivered the opinion of the Court:)

This is an appeal from an order of the Supreme Court of the District of Columbia, denying a writ of mandamus to require the Secretary of the Interior to approve the selection by the relator, Willis C. West, of 160 acres of land in the Wichita Reservation, in the Ter-

ritory of Oklahoma, under an act of Congress of March 2, 1895. The case was heard in the court below on issue joined on a plea interposed by the relator, the appellant here, to the answer of the appellee, the Secretary of the Interior, to the petition of the relator.

It appears that on August 5, 1901, the relator, claiming to be an adopted member of the Wichita Indian tribe, filed his petition in the Supreme Court of the District of Columbia, and rule to show cause followed.

In response, a demurrer to the petition was interposed, which, by an order entered August 27, 1901, was sustained, the rule to show cause was discharged, and the petition dismissed. Upon appeal that order was reversed by this court, and the cause remanded "for further proceedings therein according to law."

The defendant below filed his answer to the petition, wherein, among other things, after reciting the duty laid upon him, as Secretary of the Interior, in the premises, he averred that, being without knowledge of relator's status at the time of his application for allotment, defendant, as such secretary, examined and considered relator's application and all the evidence and proofs presented to him to support it, including all the matters now set forth in the petition, together with such other evidence and proofs bearing thereon as were embodied in the public records and files of the Indian Bureau and Department of the Interior, and that upon full consideration thereof the defendant, as Secretary of the Interior, did, on the 3rd day of July, 1901, reach and announce a conclusion and decision that relator was not, by nativity or adoption, a member of the Wichita and affiliated bands of Indians, and for that reason was not entitled to an allotment, and thereupon denied relator's application.

The relator filed motion for the issuance of the peremptory writ, and later a demurrer, which were successively overruled.

Relator thereafter filed his several pleas (four in number), to which defendant demurred, the demurrer being overruled as to the first plea and sustained as to the others; and on the first plea, as follows, issue was joined:

"The relator says that the defendant, as Secretary of the Interior, did not, by the decision alleged in the answer to have been made by him on July 3, 1901, decide that the relator was not by nativity or adoption a member of the Wichita or affiliated band- of Indians, and for that reason deny him the said allotment."

Upon this issue the cause was tried by the court, to maintain which issue, on his part, relator offered in evidence a duly certified copy of the Secretary's said decision of July 3, 1901, and defendant, on his part, offered in evidence official exemplifications of the correspondence, decisions, regulations, etc., alleged to be the ones referred to in his answer, as well as of the decision of July 3, 1901. To all save the last mentioned of defendant's evidence relator objected, and saved his exceptions to their admission.

Upon all the evidence the court found generally for the defendant, and especially that he did reach and announce a conclusion and decision that relator was not, by nativity or adoption, a member of the Wichita and affiliated bands of Indians, therefore not entitled

to an allotment, and thereupon denied relator's application for allotment, and that the defendant, as Secretary of the Interior, disapproved relator's application for membership by adoption in the Wichita Indian tribe. Relator's prayer for the issuance of the peremptory writ was denied, the rule to show cause discharged, and the petition dismissed.

At the outset it is insisted by appellant that this court on the former appeal decided that the duties of the Secretary of the Interior in this case, as shown by the petition for the writ, were purely ministerial. We do not so understand it. A demurrer having been interposed, the court held that the conceded facts were those stated in the relator's petition, and consequently it appeared that the relator had done everything required of him by the statute. Now it appears that the defendant answered, and to that answer the relator filed a plea. In the former decision this court clearly recognized that the action of the Secretary calling for the exercise of judgment could not be controlled, saying: "It was for him to determine whether the relator was within the category of persons entitled to an allotment of land, whether the land selected was of the kind which the relator was entitled to select, whether it interfered with the rights of any other persons, and all other preliminary matters going to the validity or invalidity of the relator's action."

Furthermore, in the case of United States, *ex rel.* Cox, *v.* Hitchcock, 19 App. D. C., 347, which was a similar proceeding to this, this court said: "The right of approval reserved to the Secretary by the act of Congress, and which, of course, involves the right of disapproval, is not a merely ministerial duty. Plainly it requires the exercise of judgment and discretion. It requires of the Secretary to determine whether the land selected is subject to selection, and whether all the prerequisites required by the law to be performed in order to justify his approval have in fact been performed."

This rule is in harmony with the analogous case of Riverside Oil Co. *v.* Hitchcock, 190 U. S., 316, in which the court said: "Mandamus has never been regarded as the proper writ to control the judgment and discretion of an officer as to the decision of a matter which the law gave him the power and imposed upon him the duty to decide for himself."

If the Secretary of the Interior was vested with authority to decide whether the relator was entitled to an allotment under the agreement of June 4, 1891, and the statute ratifying it, then the performance of that duty was not a ministerial one, but required the exercise of judgment and discretion, and is not reviewable by the courts, even though it may seem that his determination is an erroneous one. We think there is no question but such power was vested in him. Sections 441 and 463 of the Revised Statutes give to the Secretary of the Interior management of all affairs of the Indians and of all matters arising out of their relations. The power of Congress to deal with the Indians is of the most sweeping character, and it has been recognized and affirmed by the Supreme Court from the earliest days down to the present time. Cherokee Nation *v.* Georgia, 5 Peters, 1; Choctaw Nation *v.* United States, 119 U. S., 1; Cherokee

Nation *v.* Kansas Railway Co., 135 U. S., 641; Lone Wolf *v.* Hitchcock, 187 U. S., 553. In Stevens *v.* Cherokee Nation, 174 U. S., 445, the court refused to hold that Congress could not empower the Dawes Commission to determine who were entitled to citizenship in each of the tribes and make out correct rolls of citizens.

Congress having given very general powers to the Secretary of the Interior to deal with the Indians, we think that he is empowered to provide that an adoption by an Indian tribe of a person not an Indian must be approved by the Secretary of the Interior or his subordinate, the Commissioner of Indian Affairs. This is a proper regulation and one in the interest of the Indians. But in the absence of any such regulation at a time when adoption is claimed, still the power to inquire into and decide that question is given by the agreement under which allotment is claimed by the relator.

Article 4 of that agreement provides that the allotments of land are to be approved by the Secretary of the Interior. That fairly implies that he is to determine whether the party claiming the allotment is one of the parties referred to in article 2; that is, whether he is a member of the tribe or of the affiliated bands referred to. The determination of the question is an exercise of discretion and judgment.

But it is contended by appellant that the evidence in the case "disproves the return of the secretary that he did reach and announce a conclusion and decision that the relator was not by nativity or adoption a member of the Wichita and affiliated bands of Indians, and for that reason was not entitled to an allotment under the agreement so ratified."

At the most, we can only decide whether the Secretary of the Interior did actually pass upon the question. Whether his decision was right or wrong is not for us to decide. The case was tried without a jury, and the court below made certain findings of facts, among them the following:

"(2.)The court finds that the defendant did reach, and announce a conclusion and decision that the relator was not, by nativity or adoption, a member of the Wichita and affiliated bands of Indians, and for that reason was not entitled to an allotment of land as prayed, and that thereupon the defendant did deny the application of the relator for such allotment.

"(3.) The court finds that the defendant, as Secretary of the Interior, disapproved the application of the relator for membership by adoption in the Wichita tribe or band of Indians."

It appears that in 1893 the regulations of the Indian Department were revised and provision made for the approval by the Indian Office of adoptions into Indian tribes, and that such provision has been continued and acted upon and recognized by the tribal authorities. It is insisted that some years before this express provision for approval was in force, the relator was adopted as a member of the Wichita tribe, and that no retroactive effect can be given to the provision. However this may be, we believe that it was within the power of Congress to give to the Secretary of the Interior authority to determine who were entitled to citizenship in the Wichita tribe,

and the agreement of June 4, 1891, provides for the determination of that question by the Secretary of the Interior when it provides, as it does, that the allotments of land shall be approved by him, and, as before stated, we so held when this case was here on petition and demurrer.

The power is a salutary one and in the interest of the Indians as well as of the Government. This, however, is a phase of the question that we need not enlarge upon, for we have no more to do with the wisdom of the regulation and of Congressional action than we have with the question whether the Secretary arrived at a correct decision in any given case.

That the relator was adopted on different occasions by the tribal authorities, and adoption refused on at least one occasion, we may concede, for the question is not that, but rather whether the adoption was ever approved by the Indian Office, or whether anything precluded the Interior Department from determining the question after the agreement of June 4, 1891, was approved by Congress on
51 March 2, 1895. We think that the question was an open one, and that the Secretary of the Interior was free to examine the question as to right of the relator to an allotment of land, and that it was his duty so to do. When the Secretary of the Interior was called upon in 1901 to consider the right of the relator to an allotment of land it was permissible for him to examine the records of the Department of the Interior to aid him in determining the question. These records disclosed that the question of the adoption of the relator into the Wichita tribe had been passed upon by his predecessor in February, 1898. That action approved a recommendation of the Commissioner of Indian Affairs, bearing date June 7, 1895, which showed that the council of the Wichita and affiliated tribes had refused to adopt the relator. By his decision of July 3, 1901, it appears that on May 21, 1901, the council had voted in favor of the relator's adoption. It would seem that these various and conflicting tribal actions were such as would require the Secretary of the Interior, in determining whether the relator was entitled to an allotment of land, to exercise judgment, and that it was not a mere ministerial duty that he was called upon to perform. The conclusion of the Secretary was that "the application of Willis C. West for enrolment by adoption with the Wichita tribe is denied." We think this amounted to a decision that the relator was not by nativity or adoption a member of the Wichita or affiliated band of Indians, and for that reason not entitled to an allotment of land.

To approve or disapprove any alleged adoption of the relator by the Wichitas was a right vested in the Secretary of the Interior, and without his approval the relator could not become a member of the tribe. Not being a member of the tribe by nativity or adoption, he was not entitled to any allotment of land, and the Secretary of the Interior in refusing to approve an allotment was exercising a duty calling for the exercise of judgment. It follows that the answer of the Secretary was sufficient and not open to demurrer, which was therefore properly overruled. The answer and plea raised an issue which was correctly decided by the trial court, and the objection

taken to the admission of the evidence offered on behalf of the defendant was properly overruled.

Finding no reversible error in the proceedings in the lower court, we shall affirm its judgment with costs. And it is so ordered.

52 TUESDAY, *December 5th, A. D.* 1905.

No. 1555, October Term, 1905.

UNITED STATES *ex Relatione* WILLIS C. WEST, Appellant,

vs.

ETHAN A. HITCHCOCK, Secretary of the Interior.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said Supreme Court, in this cause, be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE DUELL.

December 5, 1905.

THURSDAY, *December 7th, A. D.* 1905.

No. 1555.

UNITED STATES *ex Relatione* WILLIS C. WEST, Appellant,

vs.

ETHAN A. HITCHCOCK, Secretary of the Interior.

On motion of Mr. S. A. Putman, of counsel for the appellant, It is ordered by the Court that a writ of error to remove this cause to the Supreme Court of the United States, issue, and the bond for costs is fixed at the sum of three hundred dollars.

53 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between United States *ex relatione* Willis C. West, Appellant, and Ethan A. Hitchcock, Secretary of the Interior, Appellee, a manifest error hath happened, to the great damage of the said appellant as by his complaint appears. We being willing

that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 4th day of January, in the year of our Lord one thousand nine hundred and six.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by
—— ——.

54 *(Bond on Writ of Error.)*

Know all men by these presents, That we, Willis C. West, as principal, and William C. Shelly and A. O. Von Herbulis, as suret-, are held and firmly bound unto Ethan A. Hitchcock in the full and just sum of Three hundred dollars to be paid to the said Ethan A. Hitchcock, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 2nd day of January, in the year of our Lord one thousand nine hundred and six.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said Court, between The United States upon the relation of Willis C. West, appellant, and Ethan A. Hitchcock, Secretary of the Interior, appellee, a judgment was rendered against the said Willis C. West, and the said Willis C. West having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Ethan A. Hitchcock, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, That if the said Willis C. West shall prosecute said writ of error to effect, and answer

all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIS C. WEST. [SEAL.]
WILLIAM C. SHELLY. [SEAL.]
A. O. VON HERBULIS. [SEAL.]

Sealed and delivered in the presence of—
——— ———.

O. K.
D. W. BAKER,
U. S. Att'y D. C.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 1555. United States *ex Relatione* Willis C. West, Appellant, *vs.* Ethan A. Hitchcock, Secretary of the Interior. Bond for costs on Writ of Error to Supreme Court, U. S. Court of Appeals, District of Columbia. Filed Jan. 4, 1906. Henry W. Hodges, Clerk.

55 UNITED STATES OF AMERICA, *ss:*

To Ethan A. Hitchcock, Secretary of the Interior, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein United States *ex relatione* Willis C. West, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 4th day of January, in the year of our Lord one thousand nine hundred and six.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Jan. 4, 1906.

Service of Citation hereby accepted.

DANIEL W. BAKER,
U. S. Att'y for D. C.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jan. 4, 1906. Henry W. Hodges, Clerk.

56 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 55 inclusive contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of United States *ex Relatione* Willis C. West, Appellant, *vs.* Ethan A. Hitchcock, Secretary of the Interior No. 1555, January Term, 1906, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 8th day of January, A. D. 1906.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 20,074. District of Columbia Court of Appeals. Term No. 194. The United States *ex relatione* Willis C. West, plaintiff in error, *vs.* Ethan A. Hitchcock, Secretary of the Interior. Filed January 31st, 1906. File No. 20,074.